REPORTS
OF
CASES
Adjudg'd in the
Court of King's Bench;
WITH
Some Special CASES in the Courts of *Chancery*, *Common Pleas* and *Exchequer*, from the First Year of K. *WILLIAM* and Q. *MARY*, to the Tenth Year of Queen *ANNE*.

By *WILLIAM SALKELD*,
Late Serjeant at LAW.

With Two Tables; the one of the Names of the Cases, the other of the Principal Matters therein contained.

VOL. II.

Allow'd and approv'd by the Lord High Chancellor of Great Britain, and all the Judges.

In the *SAVOY*:
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An Additional CATALOGUE of the Names of as many of the SUBSCRIBERS to Serjeant *Salkeld*'s *Reports* as came to our Hands ſince the Publiſhing of the Firſt Volume.

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Law Common, Canon, Civil, &c.

Blankard *verſus* Galdy. Trin. 5 W. & M. B. R. Intr. Paſ. 3 W. & M. Rot. 35.

(1) Where an uninhabited Country is found out and planted by *Engliſh* Subjects, all Laws in force here are immediately in force there; but in the Caſe of an inhabited Country conquered, not till declared ſo by the Conqueror.

IN Debt on a Bond, the Defendant prayed Oyer of the Condition, and pleaded the Statute E. 6. againſt buying Offices concerning the Adminiſtration of Juſtice; and averred, That this Bond was given for the Purchaſe of the Office of Provoſt-Marſhal in Jamaica, and that it concern'd the Adminiſtration of Juſtice, and that Jamaica is part of the Revenue and Poſſeſſions of the Crown of England: The Plaintiff replied, That Jamaica is an Iſland beyond the Seas, which was conquered from the Indians and Spaniards in Q. Elizabeth's Time, and the Inhabitants are governed by their own Laws, and not by the Laws of England: The Defendant rejoined, That before ſuch Conqueſt they were governed by their own Laws; but ſince that, by the Laws of England: Shower argued for the Plaintiff, That on a Judgment in Jamaica, no Writ of Error lies here, but only an Appeal to the Council; and as they are not repreſented in our Parliament, ſo they are not bound by our Statutes, unleſs ſpecially named. Vide And. 115. Pemberton contra argued, That by the Conqueſt of a Nation, its Liberties, Rights and Properties are quite loſt; that by Conſequence their Laws are loſt too, for the Law is but the Rule and Guard of the other; thoſe that conquer, cannot by their Victory loſe their Laws, and become ſubject to others. Vide Vaugh. 405. That Error lies here upon a Judgment in Jamaica, which could not be if they were not under the ſame Law. Et per Holt C. J. & Cur'.

1ſt, In Caſe of an uninhabited Country newly found by our Engliſh Subjects, all Laws in force in England, are in force there; ſo it ſeemed to be agreed.

2dly, Jamaica being conquered, and not pleaded to be parcel of the Kingdom of England, but part of the Poſſeſſions and Revenue of the Crown of England, the Laws of England did not take place there, until declared ſo by the Conqueror or his Succeſſors. The Iſle of Man and Ireland are part of the Poſſeſſions of the Crown of England; yet retain their ancient Laws:

That in Davis 36. it is not pretended, That the Custom of Tanistry was determined by the Conquest of Ireland, but by the new Settlement made there after the Conquest: That it was impossible the Laws of this Nation by mere Conquest, without more, should take place in a conquered Country; because, for a Time there must want Officers, without which, our Laws can have no Force: That if our Law did take place, yet they in Jamaica having Power to make new Laws, our general Laws may be altered by theirs in particulars; also they held, That in the Case of an infidel Country, their Laws by Conquest do not intirely cease, but only such as are against the Law of God; and that in such Cases, where the Laws are rejected or silent, the conquered Country shall be governed according to the Rule of natural Equity. Judgment pro quer'.

Mathews *versus* Burdett. Hill. 1 Ann. B. R.

(2) Canons oblige not the Laity without the Consent of the Civil legislative Power.

IN the primitive Church, the Laity were present at all Synods: When the Empire became Christian, no Canon was made without the Emperor's Consent: The Emperor's Consent included that of the People, he having in himself the whole legislative Power, which our Kings have not: Therefore, if the King and Clergy make a Canon, it binds the Clergy in re Ecclesiastica, but it does not bind Laymen; they are not represented in Convocation, their Consent is neither asked nor given.

LEASES.

Haths *verſus* Aſh. Trin. 8 Will. III. C. B.

A Leaſe to commence a datu, includes the Day of the Date. Adjudg'd by three Judges againſt Treby C. J. (1) Commencement *a datu*.

Stomfill *verſus* Hicks. Mich. 9 Will. III. C. B.

A. Leaſes to B. for a Year, and from Year to Year as long as it ſhall pleaſe both Parties. Adjudg'd that this is a Leaſe for two Years, and afterwards at Will; and ſo it was rul'd, inter Bellaſis and Burbrich, Hill. 8 W. 3. C. B. Vide infra, pl. 4. contra, and pl. 6. (2) Leaſe for a Year, and ſo from Year to Year, *quamdiu, &c.*

A. poſſeſs'd of a Term for 100 Years, grants the Land Habendum for 40 Years, to commence after his Death. This is a good new Leaſe; and if H. poſſeſs'd of a Term for 20 Years, grant the Tenements for nineteen Years, to commence after his Death, this will be good for ſo much of the twenty Years as ſhall be unexpired at the Time of his Death. Rul'd by Holt C. J. at Lent Aſſizes at Dorcheſter, 10 W. 3. Gree verſus Studdley. (3) Termor for Years grants for a leſs Term, to commence after his Death. Good.

If A. demiſe Lands to B. for a Year, and ſo from Year to Year, this is not a Leaſe for two Years, and afterwards at Will; but it is a Leaſe for every particular Year, and after the Year is begun, the Defendant cannot determine the Leaſe before the Year is ended. But in a Leaſe at Will, the Defendant may determine his Will after Payment of his Rent, at the End of a Quarter, but not the Beginning, leſt the Leſſor ſhould loſe his Rent. The Leſſor cannot determine his Will in the Middle of a Quarter, without permitting the Tenant to have the Emblements. Ruled by Holt C. J. at Summer Aſſizes at Lincoln, 1699. (4) Leaſe for a Year, and ſo from Year to Year, *quamdiu, &c.* what it is, and when it may be determined. When Leſſor or Leſſee at Will may determine his Will.

Leighton *verſus* Theed. Hill. 13 Will. III. B. R.

IF H. holds Land at Will, rendring Rent quarterly, the Leſſor may determine his Will when he pleaſes; but if he determines it within a Quarter, he ſhall loſe the Rent which ſhould have (5) When Leſſor or Leſſee at Will may determine his Will.

have been paid for that Quarter in which he determines it. So the Leſſee may determine it when he pleaſes, but then he muſt pay the Quarter's Rent. Per Holt C. J.

Legg *verſus* Strudwick. Hill. 7 Ann. B. R.

(6) Parol Demiſe to hold from Year to Year, & ſic ultra quamdiu, &c. is a Leaſe for two Years, and after every ſubſequent Year begun, not determinable till that be ended.

IN Replevin the Defendant avowed, for that he being ſeiſed in Fee of the Locus in quo, demiſed the ſame to A. Habendum de anno in annum & ſic ultra quamdiu ambabus partibus placeret, to commence from Lady-Day 1703, rendring an annual Rent, payable quarterly. The Leſſee entered, and died the 7th of December, 1706. And Rent for a Year and a half ending at Chriſtmas before was arrear, for which the Leſſor entred and diſtrained. To this the Plaintiff demurred. Et per Curiam, It was held firſt, That after the two Years, the Leſſor or Leſſee might determine; but if the Leſſee held on, he was not then Tenant at Will, but for a Year certain; for his holding on muſt be taken to be an agreement to the original Contract, and in execution of it; and the firſt Contract was from Year to Year. 2dly, The third Year is not in the Nature of a diſtinct Intereſt, becauſe it ariſes from the ſame executory Contract, and therefore the Leſſor may diſtrain the third Year for the Rent of the Second; and ſuch an executory Contract as this, is not void by the Statute of Frauds, tho' it be for more than three Years, becauſe there is hereby no Term for above two Years ever ſubſiſting at the ſame Time; and there can be no fraud to a Purchaſer, for the utmoſt Intereſt, that can be to bind him, can be only one Year. And Holt C. J. cited this Caſe, coram Hale C. J. A Compoſition was agreed upon between the Parſon and his Parishioners for Tithes quamdiu ambabus partibus placuerit. If the Parishioner plows and ſows, the Parſon ſhall not that Year recede and demand Tithe in kind, but muſt make his Election at the Beginning of the next Year; for the Pariſhioner would not perhaps have ſowed his Land, but that he relied upon his Contract. Cro. El. 775. Keilw. 65. Aleyn 4. 2 Jon. 151. Sid. 359. 14 H. 8. 10.

(1) And not void by the Statute of Frauds.

LEGACY.

Lewer *versus* Jones. Mich. 2 Ann. B. R.

IT was held by Holt C. J. clearly, That a Devisee may maintain an Action at Common Law against a Executant for a Legacy devised out of Land; for where a Statute, as the Statute of Wills, gives a Right, the Party by Consequence shall have an Action at Law to recover it. (1) Action lies for a Legacy devised out of Land.

Smell *contra* Dee. Mich. 6 Ann, In Canc.

HE bequeath'd by his Will, in these Words, viz. I give 100 l. apiece to the two Children of J. S. at the End of ten Years after my Decease: The Children died within the ten Years. Et per Cowper Lord Chancellor, This is a lapsed Legacy, and shall not go to the Executors of the Children; for the Diversity is where the Bequest is to take Effect at a future Time, and where the Payment is to be made at a future Time. And tho' it was objected by Sir Thomas Powys, That this differ'd from the Case where a Man devised 100 l. to J. S. at his Age of twenty-one, because it is a Contingency whether he attain to that Age; but the Expiration of the ten Years is inevitable; yet the Lord Chancellor answered, That where-ever the Time is annexed to the Legacy it self, and not to the Payment of it, if the Legatee dies before the Time of Payment, it is a lapsed Legacy in that Case. Vide Dy. 59. b. 2 Ven. 342. Off. Ex. 347. Swinb 311, 313. (2) Where a Time is annex'd to the Legacy, and not to the Payment, and Legatee dies before that Time, 'tis lapsed.

If a Legacy be devised generally, and no Time ascertained for the Payment, and the Legatee be an Infant, he shall be paid Interest from the Expiration of the first Year after the Testator's Death; but it seems a Year shall be allowed, for so long the Statute of Distribution allows before the Distribution be compellable, and so long the Executor shall have, that it may appear whether there be any Debts; but if the Legatee be of full Age, he shall only have Interest from the Time of his Demand after the Year; for no Time of Payment being set, it is not payable, but upon Demand, and he shall not have Interest, but from the Time of his Demand; otherwise it is in case of an Infant, because no Laches is imputed to him. But where a certain Legacy is left payable at a Day certain, it must be paid with

In-

Interest from that Day. Et nota, The Interest allowed is 5 l. per Cent. Per Cowper Lord Chancellor.

Hern *contra* Merick. Coram Harcourt *Lord Chancellor.* In Canc.

(3) Where real Estate shall be charged with Legacies in Equity.

H. Seised in Fee, and indebted by Bonds, by Will gives Legacies to Children (whom he had otherwise provided for before) and devises his Land to his eldest Son in Tail. The eldest Son being also Executor, pays the Bonds with the personal Estate, and now the Legatees brought a Bill to come against the real Estate in the Place of the Bond-Creditors, and be paid out of the Land. The Court seem'd to admit, That if the Lands had descended, the Legatees might have been relieved in this manner; but since the Testator had devised them, it was resolved, That they ought to be exempted, for it was as much the Testator's Intention that the Devisee should have this Land as the others should have the Legacies, and a specifick Legacy is never broke into, in order to make good a pecuniary one. Also this Case is out of the Statute against fraudulent Devises, because the Debts are paid, and the Children being otherwise provided for, are not in the Nature of Creditors. Nota, This Case was upon an Appeal from the Decree of the Master of the Rolls, who held, That the real and personal Estate should be so charged, that both the Debts and Legacies should be paid.

Libellus Famoſus.

Dominus Rex *verſus* Bear. Hill. 10 Will. III. B. R.

INDICTMENT for Compoſing, Writing, Making and Collecting ſeveral Libels, in uno quorum continetur inter alia juxta tenorem & ad effectum ſequent', and then ſets out the Words. Upon Not guilty pleaded, the Jury found the Defendant guilty as to the Writing and the Collecting prout in indictamento ſupponit' & quoad omnia alia præter ſcriptionem & collectionem Not guilty: An Exception was taken in Arreſt of Judgment, That inter alia ſhew'd there was ſomething elſe, which perhaps might, if it appeared, qualify the reſt.

The whole Libel need not be ſet forth in Indictment, but if any Part qualifies the reſt, it may be given in Evidence.

Et per Cur. Non allocatur; For if that had been the Caſe, the Defendant could not have been found guilty; and regularly, where a Man ſpeaks Treaſon, God ſave the King will not excuſe him. Vide 2 Ro. Rep. 89. and it is not neceſſary to ſet forth all the Libels, but if any Thing qualify that which is ſet forth, it muſt be given in Evidence.

2dly, It was agreed, ad effectum ſequentem of it ſelf had been naught; for the Court muſt be Judge of the Words themſelves, and not of the Conſtruction the Proſecutor puts upon them; but juxta tenorem ſequent', imports the very Words themſelves. Vide Co. Ent. 116. Reg. 169. For the Tenor of a Thing is the Tranſcript: And Rokeby ſaid, the Words ad effectum were looſe and uſeleſs Words; and the Words, juxta tenorem, being of a certain and more ſtrict Signification, the Force of the latter was not hurt by the former, for Utile per inutile non vitiatur, quod Holt C. J. conceſſit; and the Caſe of Saltaſhe. H. 33 & 34 Car. 2. B. R. Rot. 1154. was remembred and agreed, and all were of Opinion, That the Words, ad effectum, were corrected by the Words, juxta tenorem.

3dly, It was held, That the finding guilty of bare Writing and Collecting was criminal, not but that Collecting had been better out of the Caſe; for, per Holt C. J. bare Copying out of a Libel, by one that is neither Contriver nor Compoſer, is highly criminal; and as to this the Chief Juſtice ſaid, the Eſſence of a Libel conſiſts not in the infamous Matter, for if a Man ſpeaks ſuch Words, unleſs the Words be put in Writing, he is not guilty of a Libel; but the Nature of a Libel conſiſts in putting this infamous

Copying a Libel is criminal.

Eſſence of a Libel conſiſts in the Writing.

mous Matter into Writing; and therefore if Bear wit such Matter, he is a Libeller; for it was not a Libel till it was witten; and in all Cases where a Man does that Act, which makes a Thing to be what it is, he is and must be construed to be the Doer of that Thing. This is seen in all Offences, from the highest to the lowest.

If H. contrives any treasonable Matter, and another writes down the Contrivance, the Writer is as guilty as the Inventor. Where an Act of Parliament makes Sodomy Felony, and says nothing of the Abettors, if B. should stand by and hold the Door while A. committed Sodomy, B. would be as guilty of Felony as A. So in 3 Inst. 59. where an Act of Parliament makes any Thing Felony, tho' nothing be said of the Accessaries in the Statute: So in the lowest Offences, where there are no Accessaries, but all are Principals, as if H. should hold A. while B. beats him, he is guilty of the Battery.

So in the principal Case, he that does that without which the Thing could not be what it is, viz. a Libel, cannot be construed to be innocent.

He that writes a Libel is the Contriver.

It is objected, That it is held in 9 Co. 59. b. Lamb's Case, That a Libeller must be either the Contriver, Procurer, or the Publisher. But this ought to be expounded by Moor 813. Where the Writer is held to be in Law, a Contriver, and then that ground of my Lord Coke's may be admitted to be Law; otherwise it will be doubtful; for if that Case be looked into, the Question there was about the Publication of a Libel and it was held, That writing a Copy of a Libel was not a Publication, but only Evidence of a Publication; but there was no Question made how far he was guilty of Libelling; and for the Matter of Publication, the bare having a Libel is not a Publication. If a Libel be publickly known, having a witten Copy of it, is an Evidence of a Publication; but otherwise where it is not known to be published.

Having a written Copy of a known Libel, is Evidence of a Publication.

It is objected, That writing a Libel may be a lawful Act, as by the Clerk that draws the Indictment, or by a Student who takes Notes of it; and so the Defendant's might be a lawful Writing.

Where a Matter is unlawful in general, a general Allegation shall be so taken.

To this the Chief Justice answered, That the Matter abstractedly considered is unlawful, therefore the general finding shall be taken to be criminal; and that if the Writing was innocent, as in the Case objected, there ought to be a Special Finding of these Particulars, which distinguish and excuse it. If an Action be brought on the Statute of Maintenance, 'tis sufficient to say, quod manutenuit; yet in some Circumstances, a Man may lawfully maintain a Suit, as an Attorney or a near Relation; yet, because it is unlawful in Abstracto, that general Allegation is enough, and shall be understood of an unlawful Maintenance; and farther it cannot be understood of such a Writing, for if an

Officer or Student does it, 'tis no Libel; because it is not done ad infamiam of the Party, but to bring the Offender to punishment, and it is only tenor Libelli, and upon such Evidence the Defendant could not be found guilty. The Case in 3 Inſt. 174. is a strong Case: In that Case J. de Northampton is charged with writing only, and there is no mention made of a Publication.

I am not under any neceſſity of giving my Opinion, whether writing a Copy of a Libel be writing of a Libel; for if it be not, then the Jury having found the Defendant guilty of writing a Libel, he muſt be taken to be guilty of writing the Original, and a Copy could not be given in Evidence. On the other Side, if the Copy of a Libel be a Libel, then the Writing of it is a great Offence: But that People may not go away with a Notion, that writing of a Copy, tho' by one that has no warrantable Authority, is not Libelling, the Chief Juſtice ſaid, That ſuch a Copy contained all Things neceſſary to the Conſtitution of a Libel, viz. The ſcandalous Matter, and the Writing; and it has the ſame pernicious Conſequence; for it perpetuates the Memory of the Thing, and ſome Time or other comes to be publiſhed; therefore he held, That writing a Copy of a Libel was writing a Libel, and if the Law were otherwiſe, Men might write Copies and print them with Impunity.

Writing a Copy of a Libel without Authority, is writing a Libel.

Farther, the Chief Juſtice ſaid, That the Defendant had great Favour in the Verdict, for when a Libel appears under a Man's own Hand-Writing, and no other Author is known, he is taken in the manner, and it turns the Proof upon him; and if he cannot produce the Compoſer, it is hard to find that he is not the very Man. A Man could have no Temptations to write ſuch Libels, but Rancour againſt the Government.

Laſtly, It was objected, That the Defendant being found guilty of Collecting and Writing, and not of Making and Compoſing, the Verdict is repugnant, or an Acquittal; ſed non allocatur; for Making is the Genus, and Compoſing and Contriving is one Species; Writing a ſecond Species, and procuring to be written a third Species; ſo that not finding him guilty of all, but Writing only, is finding him Not guilty of any Species of Making, but Writing. Juſtin. Inſt. lib. 4. cap. 4. par. 1. de injuriis, and Bract. lib. 3. Fitz. tit. Coron. 135. Bare Writing was puniſhable in the Star-Chamber. Hob. 62, 215. 12 Co. 35. Hetl. 4. Moor 421. Dy. 372. Judgment pro Rege.

LIMITATIONS.

Hall *verſus* Wybourn. Trin. 1 W. & M. Rot. 130. B. R.

(1) Defendant's being beyond Sea does not avoid the Statute of Limitations.

IN Bar of the Statute of Limitations, the Plaintiff replied, that the Defendant was beyond Sea, and it was held no Plea, for the Plaintiff might either file his Original, or outlaw him; and in one Bynion's Caſe, it was held by Bridgman C. J. That tho' the Courts of Juſtice were ſhut up ſo as no Original could be filed, yet this Statute would bar the Action; becauſe the Statute is general, and muſt work upon all Caſes which are not exempted by the Exception.

Budd *verſus* Berkenhead. Trin. 2 W. & M. B. R.

(2) In Replication to avoid the Statute of Limitations, the Continuances muſt be ſhewn.

DEFENDANT having pleaded the Statute of Limitations, the Plaintiff replied in Avoidance, That he ſued out an Attachment returnable, Mich. 34 Car. 2. Et quod ſuperinde taliter proceſſum fuit, that the Defendant in Michaelmas Term, 2 Jac. 2. appeared, &c. Et per Cur'. This Pleading is not good, it muſt be ſhewn that there were Continuances till the Time of declaring, and a taliter proceſſum is not ſufficient to ſhew a Matter before Declaration, tho' it has been held ſo for Matters after.

Coventry *verſus* Apſley. Mich. 3 W. & M. Rot. 411. B. R.

(3) Impriſonment, Statute of Limitations pleaded to part. Plaintiff ought to reply, it was one continued Dureſs.

TRESPASS for impriſoning him, and detaining him in Priſon from 32 Car. 2. till the 3d of April, 4 Jac. 2. The Defendant pleaded as to all, till 34 Car. 2. ſuch a Day, non cul. infra quatuor Annos, and as to the reſt, a Plaint and a Capias iſſued. The Plaintiff demurred: Et per Cur'. Tho' the Impriſonment be complained of as one continued Impriſonment, yet the Defendant may divide the Time, and plead the Statute as to part, and the Plaintiff may reply the Continuance; therefore as to this, Judgment was given againſt the Plaintiff upon his Demurrer, but for him as to the reſt; becauſe the Capias was awarded by the Court ex Officio, and it did not appear that the Defendant meddled in it.

Cary & Ux' *verſus* Stephenſon. Paſ. 6 W. & M. B. R. Intr. Hill. 5 W. & M. Rot. 37.

H. Was indebted to A. who died, B. received the Money, and afterwards the Plaintiff's Wife took out Letters of Adminiſtration to A. and within ſix Years after the Letters of Adminiſtration, but not within ſix Years after the Receipt of the Money, brought an Indebitatus Aſſumpſit againſt B. as for Money had and received to the uſe of him and his Wife; the Defendant pleaded Non Aſſumpſit infra ſex Annos; the Plaintiff replied the Special Matter; and upon Demurrer, the Court were of Opinion, That the Statute could be no Bar, becauſe the Plaintiff's Title commenced by taking out Letters of Adminiſtration, and this was not a Cauſe of Action in the Inteſtate; but they thought it hard to make this ſo much Money received to the Plaintiff's Uſe, when at the Time of this Receipt, he was not Adminiſtrator. Note, There was a faulty Replication, and the Court adviſed the Plaintiff to bring a new Action, and ſo the Matter went off.

(4) A. receiv'd the Inteſtate's Money, and afterwards Adminiſtration was granted to B. The Cauſe of Action accrues by the Adminiſtration.

Stokes *verſus* Berry. *At the Summer-Aſſizes at* Lincoln, 1699. Coram Holt *C. J.*

IF A. has had Poſſeſſion of Lands for twenty Years without Interruption, and then B. gets Poſſeſſion, upon which A. is put to his Ejectment, tho' A. is Plaintiff, yet the Poſſeſſion of twenty Years, ſhall be a good Title in him, as if he had ſtill been in Poſſeſſion. Ruled per Holt C. J. The ſame Point was ruled by Holt C. J. at Lent Aſſizes for Bucks, 12 W. 3. becauſe a Poſſeſſion for twenty Years, is like a Diſcent, which tolls Entry, and gives a Right of Poſſeſſion, which is ſufficient to maintain an Ejectment.

(5) Twenty Years Poſſeſſion is a good Title in Ejectment for the Plaintiff, as well as Defendant.

Green *verſus* Rivett. Paſ. 1 Ann. B. R. Intr. Mich. 13 Will. III. Rot. 316.

INDEBITATUS ASSUMPSIT laid ſeveral Ways; the Defendant pleaded Action non, quia dicit quod billa prædict. exhibit. fuit 20 die Junii & non antea, & quod ipſe ad aliquod tempus infra ſex Annos ante exhibitionem billæ prædict. Non Aſſumpſit, &c. The Plaintiff replied, a Bill of Middleſex, teſted die Lunæ prox' poſt tres ſeptimanas, &c. returnable the ſame Day, whereupon was returned non eſt inventus, and continued down, by Vic. non miſit breve & præcept. ſicut alias; to this it was demur-

(6) Plea of the Statute of Limitations to be favoured.

ed, and Judgment given for the Defendant; for there cannot be such a Bill of Middlesex as this, which is returnable the very Day of the Teste, and the Statute of Limitations, on which the Security of all Men depends, is to be favoured.

Hunt *versus* Burn. Hill. 1 Ann. B. R.

Vide *the State of this Case, Tit.* Fines, pl. 5. Vol. 1. p. 339.

(7) H. barred of his *Formedon*, may take Advantage of a Right of Entry.

1st, UPON the Question in this Case, Whether it appeared by the Verdict, that the Issue in Tail was barred of his Formedon by 21 Jac. 1? the Court held, That the Verdict was insufficient; and that it should have found that no Formedon was brought, else the Court could not intend but that it was brought, for this is Matter of Bar, which should come on the Defendant's Part to shew; and this Act is not penn'd as the Statute de finibus: It is enough in that Case to find a Fine, and you need not find that the Party claimed or entered not, for that comes in by Way of Proviso; but here it is part of the Body of the Act.

2dly, They held, That supposing him barred of his Formedon, yet he is not thereby hindered to pursue his Right of Entry, which accrued to him by the Death of Tenant for Life; for this is a new Right which he had not before: That where a Man releases his Right, he cannot pursue his Action or Remedy, but if a Man has a Right and several Remedies, the Discharge of one is not a Discharge of the other, and that the Statute of 4 H. 7. enures and operates by Way of Bar to the Right, which answers Saul and Clerk's Case, Jones 210, 211. But the 21 H. 8. and the 21 Jac. 1. operate by Way of Bar to the Remedy, and the word Right there is Right of Entry.

(8) Heyling *versus* Hoskins. Vide *this Case, Title* Action sur le Case sur Assumpsit, pl. 19. Vol. 1. p. 29.

Gould *versus* Johnson. Hill. 1 Ann. B. R.

(9) Where the Duty arises on Consideration executory, the Defendant must plead, *Quod actio non accrevit, &c.*

ASSUMPSIT, That in consideration that the Plaintiff at the Defendant's Request, would receive A. and B. into his House, *ut Hospites*, and diet them, the Defendant promised, &c. Non Assumpsit infra sex Annos was pleaded; The Plaintiff demurred; and held no Plea; for the Defendant cannot in such Case plead Non Assumpsit infra sex Annos, but Actio non accrevit infra sex Annos; for 'tis not material when the Promise was made, if the Cause of Action be within the six Years; and the Dieting might be long afterwards; and tho' it appears upon the Face of the Declaration, that the Cause of Action did not arise within six

Years; yet the Defendant shall not take Advantage of that, without Pleading; because there might be an Original sued out, which the Plaintiff cannot otherwise shew, than by Way of Replication, upon the Defendant's putting him upon it.

Reading *versus* Royston. Hill. 1 Ann. B. R.

(10) Statute of Limitations runs not against H. unless actually ousted or disseised.

ONE seised in Fee, having Issue two Daughters, devised his Land to his Grandson by his eldest Daughter in Fee; the eldest Daughter being dead at the Time of the Devise: The Grandson died without Issue, and the Heir of the Grandson being the Heir on the Part of the Father, and the Heir of the other Coparcener entered into the Land, and took the Profits by Moieties for twenty Years together, thinking, according to the Opinion of Sir Matthew Hale in his younger Years, (who was their Counsel) that the Devise was void for one Moiety. Now the Mistake being discovered, the Heir of the Grandson brought an Ejectment against the Heir of the other Coparcener; and upon a Special Verdict found, it was objected in his Behalf, That the Devise was void as to one Moiety; but this being over-ruled, (quod vide title Discent, pl. 3. Vol. 1. p. 242.) it was then objected, That the bringing of this Ejectment against the Heir of the other Coparcener, for this Moiety, admitted the Plaintiff to be out of Possession for twenty Years, and then he was barred by the Statute of Limitations. Sed per Cur'.

The Statute of Limitations never runs against a Man, but where he is actually ousted or disseised; and true it is, one Tenant in Common may disseise another; but then it must be done by actual Disseisin, and not by bare Perception of Profits only; but here the Difficulty is not so great; there is no Tenancy in Common in this Case, for the Heir of the Grandson had the whole by Devise, and the other is a meer Stranger; and where two Men are in Possession, the Law will adjudge it in him that hath the Right. A Man may be Tenant in Common by Prescription, yet he may not be Tenant in Common by Wrong; nor can a Man be disseised of an undivided Moiety; therefore the bringing the Ejectment admits nothing; for if a Man be seised of the Whole, and makes a Lease to another of a Moiety undivided, and a Stranger ousts the Lessee, he must bring his Ejectment of a Moiety, and so if they be both ousted, they must bring several Ejectments.

Tenants in Common may be by Prescription, not by Wrong.

Cannot join in Ejectment.

Blackmore *versus* Tidderly. Hill. 3 Ann. B. R.

(11) Not guilty within six Years, is ill in Trespass.

IN Trespass for Assault and Battery, the Defendant pleaded, Non culp. infra sex Annos, by Mistake, and not according to the

the Statute, which is but four Years: The Plaintiff demurred, and after Argument it was adjudged an ill Plea; for if it be considered as at Common Law, there was no such Plea; if on the Statute, the Act is not pursued, and the Defendant could not take Issue on it; for quod est culp. infra sex Annos, is an Issue immaterial; because it may be, the Jury might find him Not guilty infra quatuor Annos, but guilty infra sex Annos. Judgment for the Plaintiff.

Hide *versus* Partridge.

(12) Statute of Limitations pleadable to a Suit in the Admiralty for Mariner's Wages. *Quære.*

LIBEL was for Mariners Wages in the Admiralty-Court, and the Defendant there pleaded the Statute of Limitations, viz. That no Cause of Action accrewed within six Years, prox' ante tempus mentionat. in Libello; and it was over-ruled there. And now upon a Motion for a Prohibition it was urged, That Mariners Wages were suable in the Admiralty by Indulgence only, and not of Right; That at Common Law, the Statute would be a good Plea: On the other Side 'twas said, the Statute extended only to Courts at Common Law; that it was not pleadable to a Proceeding in the Spiritual Court pro violenta manuum injectione super Clericum; but a Prohibition was denied, because the Statute was ill pleaded; but the Plea was afterwards amended: And Holt C. J. said, It was strange that the same Matter, well pleaded, should be a Defence in one Court and not in another. The Statute of Limitations is a good Plea in Chancery; it is true, 'tis no Plea to a Suit pro violenta manuum, &c. but that is, because the Proceeding is pro reformatione morum, and not for Damages; and so 'tis at Common Law, 'tis no Plea to an Indictment for Trespass, otherwise in an Action. Adjournat'.

Matthews *versus* Phillips, *cite and agree* Mich. 6 Ann. B. R.

(13) Action remov'd by *Habeas Corpus*, Statute of Limitations pleaded above, Plaintiff may reply, the Suit below was within six Years.

DEBT was brought in the Palace-Court, and after some Proceedings there, the six Years expired; the Defendant sued a Habeas Corpus, and removed the Cause into B. R. where the Plaintiff declared de novo, and the Defendant pleaded, That the Cause of Action did not accrew within six Years before the Teste of the Habeas Corpus; and this was held to be a good Plea, but that the Plaintiff might reply the Suit below, and shew that to have been within the six Years; not that this Suit was a Continuance of the Suit below, but that the Plaintiff had rightfully and legally pursued his Right, and it should not be in the Power of the Defendant to defeat or hinder him of a Remedy,

medy, without any Default; as where one brings an Action before the Expiration of six Years, and dies before Judgment, the six Years being then expired, this shall not prevent his Executor.

LONDON, and the Customs thereof.

Arnot *versus* Brown. Mich. 7 Will. III. B. R.

(1) Court of Aldermen's Power concerning new Lights, by 19 Car. 2. c. 3. was only during the Rebuilding of the City.

ARNOT and BROWN were Owners of two contiguous Houses. Brown had Lights in his House towards Arnot's Yard, and Arnot made up Blinds. The Court of Aldermen, upon 19 Car. 2. c. 3. ordered they should be abated; but a Prohibition was granted in B. R. For whatever they may do in their inner Court by quod permittat, where they have Power to determine real Actions; 'tis plain that the Court of Aldermen have no Power in this summary Way, unless by 19 Car. 2. c. 3. and that gave them only a temporary Power during the Rebuilding of the City. While the City was rebuilding they had Power to assign Lights; but by being once assigned, the Party gained a legal Title to them, and may maintain an Action at Common Law for the Obstruction, and the Court of Aldermen have no farther Power.

Domina Regina *versus* Rogers. Trin. 1 Ann. B. R.

(2) Custom to punish by Information in the Court of Aldermen, for Assault and contemptuous Words of an Alderman in Execution of his Office is Good. Otherwise, if to disfranchise.

UPON a Certiorari the Custom of London was returned, viz. That if any Citizen speaks contemptuous Words of an Alderman, or assault him in the Execution of his Office, an Information should be exhibited against him in the Name of the Common Serjeant in the Court of Aldermen, and that they should proceed against him to fine him; and that at a Wardmote held by Sir Robert Jeffreys, the Defendant assaulted him and said, I have as much to do here as you; you think sure you are among your Bridewel Birds, but you are mistaken; for which an In-

Information was exhibited by the Common Serjeant. Et per Cur'. It had been doubtful if the Offence had been by Words only, because no Indictment lay at Common Law, but he is to be bound to Good Behaviour; yet for Assault he is punishable, and that may be by Information there by the Custom, as well as in B. R. by the Course of the Court, tho' the regular Course at Common Law is by Indictment. 2dly, The Court held, That the Information lay in the Court of Aldermen, tho' an Alderman was grieved; otherwise of the Mayor, for he is an integral Part, without which the Court cannot be held, but the other may be severed, and he must not sit; so the Mayor and Aldermen may grant to an Alderman, but the Aldermen and City cannot grant to the Mayor: But the Court held, That a Custom to disfranchise for contemptuous Words spoken of an Alderman, was void, according to 2 Lev. 200.

Custom of LONDON concerning Freemen's Estates.

If a Freeman of London has no Wife, but has Children, the half of his personal Estate belongs to his Children, and the other half the Freeman may dispose of; so if the Freeman has a Wife and no Children, half of his personal Estate belongs to his Wife, and the other half he may dispose of: But if a Freeman hath a Wife and Children, one third Part belongs to the Wife, and another third Part to the Children, and the Freeman may dispose of the other third Part. And if such Freeman dies Intestate, the Custom affects only two Thirds, and the remaining Third is subject to the Statute of Distributions, and so dividing the whole into Ninths, four Ninths belong to the Wife, and five Ninths belong to the Children.

Custom extends only to Children, not Grandchildren.

If a Freeman of London has two Sons, and the eldest Son dies leaving a Son, and then the Freeman dies, the Grandchild, tho' in Law a Representative of the Son, who never was advanced, has no Part by the Custom; for the Custom of London extends only to the Children, and not to the Grandchildren, per Northy; and so it has been certified by the Recorder into Chancery.

Hotchpot extends only amongst Children.

If a Freeman of London has but one Child, and he has received some Portion from his Father, and the Father dies, leaving this Child and a Wife, the Child shall have his full Orphan's Part, without any Regard to what he has already received; for that Advancement in part is only to be brought into Hotchpot with Children, and not with others. Per Sir Edward Northy.

Where it appears under the Father's Hand, how much a Child has received, the Court will judge whether full Advancement, or not.

If a Freeman of London has advanced any of his Children with a Portion; yet if it appears what that Portion was by any Writing under the Father's Hand, or by the Father's Will, or his Marriage-Settlement, and by the said Will or Settlement it is said, That the said Portion is or was in full of his Child's Part by the Custom; yet this Child shall come in for the customary

Part of the reſt of the Father's perſonal Eſtate, bringing the Portion already received into Hotchpot; otherwiſe it is, if it does not appear under the Father's Hand what the Advancement was.

Lunatick, Ideot.

Hard's *Caſe*. Mich. 8 Will. III. B. R.

SIR Bartholomew Shower moved to quaſh an Order of Juſtices, for removing an Ideot to the Place of the laſt legal Settlement of his Father, comparing it to the Caſe of a Baſtard, who is to be maintained by the Pariſh where he is born. Sed per Holt C. J. The Father of an Ideot ought to maintain him, and if he cannot, the Pariſh or Place where his Father is ſettled. There is no difference between an Ideot and any other poor Child. The Caſe of a Baſtard differs, for the Reaſon of that is, becauſe he has no Father, or rather none that the Law looks upon as ſuch; and therefore till 18 Eliz. c. 3. the Pariſhes where they were born, were bound to maintain them. Adjournat'.

(1) Maintainable by the Pariſh where the Father is ſettled, not where Born.

Thomſon *verſus* Leach. Hill. 9 Will. III. B. R.

A Tenant for Life, being Non Compos, with Remainder to his firſt Son in Tail, Remainder to B. in Fee, ſurrendered by Deed of Surrender to B. before he had a Son; this Deed of Surrender was held abſolutely void, and the contingent Remainder not deſtroyed.

(2) His Deed is void.

MANDAMUS.

Anonymus. Mich. 8 Will. III. B. R.

(1) No peremptory *Mandamus* upon an Action for a false Return brought in C. B.

IN an Action on the Case in the Common Pleas, for a false Return of a Mandamus, Judgment was given for the Plaintiff upon Demurrer; and now Serjeant Pemberton came in B. R. and prayed a peremptory Mandamus, but it was denied; for, per Holt C. J. Every Mandamus recites the Fact, prout constat nobis per recordum. How can we say that in this Case, We cannot take Notice of the Records of the Common Pleas? You might have brought your Action here.

Dominus Rex *versus The Mayor and Burgesses of* Wilton. Mich. 8 Will. III. B. R.

(2) Want of Summons is no Objection if the Person appeared and was heard.

A Mandamus issued to restore Elias Chalk to the Place of a Burgess of Wilton, to which was returned a Custom for the Mayor and Burgesses to remove for Misbehaviour: Then they set forth several Instances of Misbehaviour, and that he being thereupon fully heard to all that was objected in the Common Council of the Mayor and Burgesses, and it being fully prov'd upon him, they turn'd him out. It was objected, That it was not said he was summoned. Vide Styles 51, 446, 452. 3 Bul. 189. 2 Keb. 489. Per Cur'. The End of the Summons is, that he may be heard for himself, and therefore where he has been heard, want of Summons is no Objection, but this was afterwards determined on other Objections.

(3) Where an Officer at Will is remov'd, and the Corporation does not rely upon their Power, but return a Misdemeanour, and that is insufficient, peremptory *Mandamus* shall issue.

Dominus Rex *versus The Mayor*, &c. *of* Oxon. Mich. 8 Will. III. B. R.

A Mandamus issued to the Mayor and Commonalty of Oxford, to restore Slatford to the Office of Town-Clerk; they returned their Charter of Incorporation, which gives them Power to chuse a discreet Person to be Town-Clerk, to hold at the Will of the Mayor and Aldermen; The 13 Car. 2. Stat. 2. and the Stat. of W. & M. about taking the Oaths, and that the Office of Town-

Clerk being void, they chose Slatford, and that he took the Oaths of Office, coram nobis Majore & Ballivis; but did not coram nobis Majore & Ballivis take the Oath of Allegiance, per quod his Office became void, & ea ratione, &c. Upon which these three Points were stirred and settled.

1st, Whether the Party that comes in is to take the Oaths at his Peril, or they are to tender them, and if he refused, whether it must not appear upon the Return? Et per Cur'. He must take them at his Peril; the Magistrate need not tender to him, but he must tender himself to the Magistrate, and demand them; and if he be refused, must sue a Mandamus, and the Magistrate is punishable; if the Law were otherwise, it would be in the Power of the Magistrate to elude the Act in favour of the Party.

2dly, Whether it be enough to say, he did not take the Oaths before them? And this was held naught; for two Justices have a Power to administer the Oath, and he might take the Oath before them.

3dly, Whether a Person that was only Tenant at Will, should have a peremptory Mandamus? Et per Cur'. We do not determine whether there ought to be a good Cause, or not, for such Removal; but suppose it may be without Cause, yet still they must determine their Will: Now they do not return a Determination of his Office by their Will, as the Reason why they do not admit him, but the Special Matter of his not taking the Oaths; therefore, since his Office continues, and this Excuse is insufficient, he ought to be restored. A peremptory Mandamus was granted. Vide Serjeant Whitacre's Case.

The Mayor of Coventry's *Case.* Hill. 9 Will. III. B. R.

A Motion was made for an Attachment, for not returning an alias Mandamus. Et per Holt C. J. In Case of a Mandamus out of Chancery, no Attachment lies till the Pluries, for that is in the Nature of an Action to recover Damages for the Delay; but upon a Mandamus out of this Court, the first Writ ought to be returned; yet an Attachment is never granted without a peremptory Rule to return the Writ, and then an Attachment goes for the Contempt; and in this Case a peremptory Rule was made. (4) The first Writ ought to be returned.

Dominus Rex *verſus The Mayor*, &c. *of* Coventry. Mich. 10 Will. III. B. R.

(5) Cuſtom to remove *ad libitum* good, but that muſt be return'd poſitively.

MANDAMUS to reſtore J. S. to be one of the Common-Council houſe; the Defendants returned, That they were an ancient Corporation, and that the King by his Letters Patent, reciting their Cuſtoms, amongſt which was this of electing Perſons to be of the Common-Council houſe, and removing them ad libitum, did grant and confirm all their Liberties, Cuſtoms, &c. and that they by force of the ſaid Cuſtom Time out of Mind uſed, & ſecundum formam literarum Patentium prædict. did remove him: And firſt, it was agreed, That the Eſtate, whether by Cuſtom or Charter, has this Condition annexed to it, that the Corporation might diſplace him at will, without aſſigning any Cauſe; but this differed from the Caſe of the Recorder of Bath, who was appointed by the Commiſſioners for regulating Corporations: By their Cuſtom they were to chuſe one learned in the Law for a Recorder; The Corporation turned out the Lord H. and returned, he was not learned in the Law; and held good; for whoever put him in, he muſt be ſo qualified by the Cuſtom, and he might bring an Action for a falſe Return, if he be a Perſon learned in the Laws. 2dly, This Return was held naught, becauſe it did not appear that the Corporation had any ſuch Power, but only by the Recital; whereas they ſhould have returned, they had ſuch a Power poſitively.

Anonymus. Hill. 10 Will. III. B. R.

(6) Rule to inſpect the Charter, in order to make Return, denied.

A Mandamus was granted to admit J. S. Mayor. It was moved, That the Mayor in Poſſeſſion might have a Rule to ſee the Charter, that he might be able to make a Return; for the other who had ſued the Mandamus, was not rightly elected: But it was denied, for he may return that; and in an Action for a falſe Return, ſhall have a Rule to ſee the Charter and take a Copy; and it was ſaid, That the Court went always upon that difference.

Buckly *verſus* Palmer. Trin. 11 Will. III. B. R.

(8) After the Return falſified, peremptory *Mandamus* is of Right.

AN Action was brought for a falſe Return, and a Verdict was for the Plaintiff, and a peremptory Mandamus was moved for, and oppoſed, becauſe it was a hard Verdict, &c. Et per Holt C. J. When an Action is brought for a falſe Return, and

that is falſified, we cannot refuſe a peremptory Mandamus. Sed nota, This Motion cannot be made till four Days are paſt after the Return of the Poſtea; becauſe the Defendant has ſo long to move in Arreſt of Judgment. Paſ. 12 W. 3. B. R. The Caſe of the City of Exeter.

Dominus Rex *verſus The Bailiffs and Burgeſſes of* Malden. Trin. 11 Will. III. B. R.

(8) Where the Return ſpeaks of a Conſtitution different from the Writ, it ought to deny the Suppoſal of the Writ.

A Mandamus iſſued, reciting quod cum they ought to chuſe yearly two Bailiffs, out of ſuch as had not been Bailiffs for three Years before, ideo they were commanded to chuſe. They returned their Conſtitution by Letters Patents to be, to chuſe two ex Aldermannis, and that they had choſen two, ſecundum formam & effectum literarum Patentium generally; and this was held naught, for they ought to deny their Conſtitution to be as is mentioned in the Writ, or ſhew a Compliance with the Writ; whereas they have acted according to a Conſtitution ſet forth in the Return different from the Writ, and do not deny the Suppoſal of the Writ; wherefore a peremptory Mandamus was granted.

Dominus Rex *verſus The Mayor*, &c. *of* Abingdon. Mich. 11 Will. III. B. R.

(9) *Mandamus* directed to the Mayor, Bailiffs, &c. Mayor alone may make the Return, and the others cannot diſavow; but he is puniſhable, if againſt the Conſent of the Majority.

A Mandamus was granted to the Mayor, Bailiffs and Burgeſſes of the Town of Abingdon: The Mayor made a Return and brought it into the Crown-Office, intending to move to have it filed; and now a Motion was made to ſtay the Filing of it, upon Suggeſtion, That this Return was made by the Mayor and minor Part of the Bailiffs and Burgeſſes, and againſt the Conſent of the greater Number, who would have obeyed the Writ, and therefore they prayed they might diſavow this Return and put in another. Et per Holt C. J. Where a Writ is directed to a ſingle Officer, as a Sheriff, and a Return is made by a Stranger, without his Privity, he may any Time that Term wherein the Writ is returned, come in and diſavow it, but not after the Term. Dy. 182. But in this Caſe, where the Writ is directed to ſeveral, and the Mayor, who is the moſt principal and proper Perſon, returns and brings in the Writ, it is not fit that we ſhould examine upon Affidavits, whether there was the Conſent of the Majority? We will take it, and leave you to puniſh the Mayor for this Miſdemeanor if he be guilty; for it is a great Crime, which will not only merit a heavy Fine, but a peremptory Mandamus will be granted, if the Return be falſified. If they were all equal Parties, this might be another Caſe: The Re-

Return was filed, and at the same time Leave was given to file an Information against the Mayor.

Dominus Rex *versus The Mayor*, &c. *of* Norwich. Hill. 11 Will. III. B. R.

(10) A Mandamus was granted to the Mayor, &c. of Norwich; It was moved, That the Sense of the Mayor differed from the Majority of the Corporation, and that he would execute the Writ, whereas the Corporation were for returning an Excuse, &c. And they prayed, That the Mayor might be ordered to deliver the Writ to the rest of the Corporation; sed non allocatur; for he is the Head and Principal, and take your Course against him.

Dominus Rex *versus The Mayor*, &c. *of* Abingdon. Pas. 12 Will. III. B. R.

(11) Return, that A. was elected a Burgess, but did not receive the Sacrament within a Year before, *per quod* the Election was void, and he is not a Burgess, ill.

A Mandamus was directed Majori, Ballivis & omnibus principalibus Burgensibus Burgi de A. (except R. and S.) setting forth the Constitution, and that R. and S. were capital Burgesses, chosen by the Commonalty to stand and serve for Mayor for the ensuing Year; and that they were to chuse one of them, Ideo they were commanded to elect one of them accordingly. They returned the Stat. 13 Car. 2. Sess. 2. c. 1. and that within twenty Years, prox. post. 25 March 1663. R. & S. fuerunt electi Burgenses principales, and within a Year before their Election had not received the Sacrament, per quod electio eorum vacua devenit & non sunt principales Burgenses; and this Return was held naught: 1st, The Court considered it without the last Words, Et non, &c. And as to that the Chief Justice said, the Writ supposes them to be Burgesses, and so the Court must intend them, and this is not answered by the special Matter of the Return, which shews only that he was once elected, and that was a void Election; whereas he might qualify himself and be chosen again; and here is nothing to exclude the Intendment of a subsequent Election, which is according to the Supposal of the Writ.

Return must be certain to every Intent.

2dly, The Court considered it with the last Words, and held the Et non sunt principal' Burgenses, &c. to be only part of the Conclusion or Inference; and the Chief Justice said, the Law requires the most exact Certainty in these Cases, because the Party cannot traverse nor interplead; and it is not enough to offer a Matter, so that the Party may be able to falsify it in an Action; but the Matter must be so alledged, that the Court may be able to judge of it and determine, whether it be a sufficient Cause, or not? If the Matter set forth in this Return had been so alledged

in a Plea in Bar, the Plaintiff might have replied a ſubſequent Election: Ergo, this Return is incertain; for there might have been a ſubſequent Election.

Dominus Rex *verſus The Mayor*, &c. *of* Rippon. Paſ. 12 Will. III. B. R.

(12) Return of a Reſignation in the corporate Aſſembly and Election of another into the Office, good.

MANDAMUS was directed to the Mayor, Aldermen and Commonalty of Rippon, to reſtore Sir Jonathan Jennings to his Place of Alderman of Rippon; they returned themſelves to be incorporated by another Name, viz. Mayor, Burgeſſes and Commonalty; and farther, That Sir Jonathan Jennings, at ſuch a Time, at an Aſſembly of the Corporation, came & perſonaliter libere & debito modo reſignavit his Office, declaring, he would continue to ſerve no longer in that Office, whereupon they choſe another in his Room; and this Declaration in a Corporate Aſſembly was held good, eſpecially ſince the Corporation accepted it, and choſe another in his Place; but till ſuch Election he had Power to waive his Reſignation, not afterwards; and whether a Deed was neceſſary, or not neceſſary, is not material, becauſe they have poſitively returned quod reſignavit, which is falſe, if a Deed was neceſſary, and there was none. Alſo the Court held the Writ naught, becauſe it was directed to the Corporation by a wrong Name, but refuſed to grant a new Writ of Mandamus, becauſe an Action lay againſt the particular Perſons for the falſe Return of this: Ergo, a new one would be veratious.

The Caſe of Andover. Mich. 12 Will. III. B. R.

(13) Several Perſons cannot join in a *Mandamus* to reſtore.

FIVE Perſons cannot have one Writ of Mandamus to be reſtored; for tho' the End of the Writ is to do Juſtice, yet the Foundation is the Wrong in turning them out, and the turning out of one is not the turning out of another; nor can ſeveral Perſons join in an Action on the Caſe for a falſe Return. Per Holt C. J.

Domina Regina *verſus* Twitty *and* Maddicot. Mich. 1 Ann. B. R.

(14) *Non fuit debito modo electi*, not a good Anſwer, unleſs the Writ ſuggeſts *debito modo*.

MANDAMUS to ſwear A. and B. Church-wardens, ſuggeſting that they were debito modo electi: The Return was, quod A. & B. non electi fuerunt debito modo. It was objected, That it ought not to be debito modo; and it ought to be in the Diſjunctive, nec eorum alter. elect. fuit. Sed per Holt

Holt C. J. it was resolved; 1st, That one cannot be sworn upon this Writ; for either both were chosen, or the Writ is misconceived. 2dly, Where the Writ is to swear one debito modo electus, quod non fuit debito modo elect', is a good Return, for it is an Answer to the Writ; but where it is to swear one electus Church-warden, there quod non fuit debito modo elect', is naught; because it is out of the Writ, and evasive.

Anonymus. Mich. 4 Ann. B. R.

(15) How many Days between the *Teste* and Return.

A Rule was made the first Day of this Term, viz. That if the Corporation to which the Mandamus is sent, be above forty Miles from London, then there shall be fifteen Days between the Teste and the Return of the first Writ of Mandamus; but if but forty Miles, or under, but eight Days only: And as to the Alias and Pluries, they made no Rule, but would consider of that, and that the Writ should not be tested before it was granted by the Court; so that the Alias and Pluries may be made returnable immediate, as they used to be: Also the Court said, That at the Return of the Pluries, if no Return was made, and there was an Affidavit of the Service, there should go an Attachment without hearing Counsel to excuse the Contempt.

Domina Regina *versus The Bailiffs*, &c. *of* Ipswich. *Serjeant* Whitacre's *Case*. Hill. 4 Ann. B. R.

(16) Variance between the Writ and Return in the Name of the Corporation.

A Mandamus was directed Ballivis, Burgensibus & Communitat. villæ de Gippo, to restore Serjeant Whitacre to the Office of Recordership; the Return was, responsio Ballivorum Burgensium & Commun' villæ de Gipwico sive Burgi Gipwici patet, &c. Nos ballivi, &c. return the Constitution so and so; and that the Recorder is amoveable pro malegesturis per Ballivos & Burgenses vel major' partem eorum quorum Ballivos duos esse volumus: Then they shew Serjeant Whitacre chosen to continue ad libitum, and that at such a Sessions of the Peace, the Serjeant had Notice, but did not attend; and that having Notice to answer, he appeared and answered, and by the Bailiffs, Burgesses and Commonalty (the Bailiffs being then present) he was turned out of his said Office. Et ulterius certificamus quod Inhabitantes villæ prædict. nunquam nuncupati fuerunt per nomen Ballivorum, Burgens. & Com. villæ de Gippo, &c. This Case pended long, and was often argued upon several Objections; and, 1st, The Chief Justice held, That Gippus and Gipwicus were different Names, so that the Writ was misdirected; but then they should have returned the special Matter accordingly, and relied upon it; for

that now they had admitted themselves to be the Corporation to whom the Writ was directed, by returning Executio, &c. And a Corporation may have several Names; and here it being started whether a Corporation should lose its old Name by a new Charter, the Chief Justice said it would, where the new Charter altered the very Constitution in the integral Parts of it; as if Bailiffs and Burgesses are made Mayor and Aldermen, or Mayor and Burgesses, or where an Abbot and Convent are translated into a Dean and Chapter; but if the Bailiffs and Burgesses villæ de Gippo accept a Charter, constituting them Bailiffs and Burgesses villæ Gipwici, and giving them farther Privileges, and that they shall be so called; this is a new Name only, for the old Corporation remains in the integral Parts of it. Powell being not satisfied in the first Point, it vanished without Resolution, by discovering that Gippo in the latter End of the Return was with a Dash, and in the Writ without, so that then it was not ad idem. 2dly, The whole Court held, That tho' the Bailiffs were only said to be present, they should be intended to be consenting, either actually, or as included in the major Part. 3dly, That the Recorder is bound to attend and assist at the Sessions to direct the Corporation in the Proceedings of Justice, and that his Office being a publick Office relating to Justice, Non-Attendance is a good Cause of Forfeiture. 4thly, Tho' the Summons or Notice Serjeant Whitacre had to answer this Charge, set no Time when he should appear, yet his appearing and answering cured the Defect of Notice in the Time, and would have cured want of Notice of the Charge. Palm. 453. For tho' a Man ought to be prepared, and have convenient Time for that, yet he may waive this Benefit if he will; but in this Case, his Notice was to answer his Non-Attendance at a Sessions of Oyer and Terminer, and therewith he was charged; whereas he is turned out for Non-Attendance at a Sessions of Peace, and indeed answered to that, tho' not charged therewith, which the Court held incurable and fatal, and ordered a peremptory Mandamus, and that it should be directed according to the first Writ, viz. villæ de Gippo, and must not differ; and tho' Mr. Raymond objected to a peremptory Writ, because he was only Recorder ad libitum, (1 Sid. 14.) non allocatur, for the Corporation have not returned that; they have relied upon his Misdemeanors, and not upon their Power.

Non-Attendance, a good Cause of Forfeiture of the Office of Recorder.

Defect of Notice is cured by Appearance.

Amotion must be for the Matter charged.

Domina Regina *verſus The Mayor and Aldermen of* Norwich. Paſ. 5 Ann. B. R.

(17) Several Matters may be returned, but they muſt be conſiſtent.

MANDAMUS to admit Dunch to be an Alderman of Norwich; they returned the Charter of E. 4. Quod Aldermanni onerentur & exonerentur prout in London; and that in London, if a Perſon be elected Alderman by the Ward, the Court of Aldermen may refuſe him; and that D. was elected by the Ward, but refuſed by the Mayor and Aldermen; becauſe he had not received the Sacrament infra Annum tunc prox. antecedent. Electionem ſuam; and that he was turbulent and factious, and procured his Election by Bribery; Et quod non fuit Electus. The Court agreed that ſeveral Cauſes might be returned, and that either, not qualified, or not elected, had been a good Return; but the Chief Juſtice queſtioned whether Bribery would vacate the Election, becauſe it did not appear to be an Office concerning the Adminiſtration of Juſtice, and within the Statute E. 6. Alſo the whole Court agreed, That as ſoon as D. was choſe by the Ward, it was an Election, and that the Aldermen did not chuſe, (having but one Perſon ſent them) but approve; and that before Approbation, the Election was compleat; as a Preſentation is before the Biſhop approves a Clerk; or as a Nomination is a perfect Nomination before the other preſents. It follows then, that this Return is repugnant, and the Court cannot tell what to believe; for at firſt they admit an Election, and avoid it; and yet at laſt they return, there was no Election at all: A peremptory Mandamus was granted.

Election in one Body; *Approbation* in another.

Domina Regina *verſus The Mayor*, &c. *of* Derby. Mich. 6 Ann. B. R.

(18) Writ to one to command another to do the Act, ill.

MANDAMUS to the Mayor, Aldermen, and capital Burgeſſes of Derby, viz. Whereas A. and B. &c. removed the Party complaining from his Office of Burgeſs, commanding them to command A. and B. to reſtore him, was quaſhed; for it is abſurd that the Writ ſhould be directed to one Perſon to command another.

Anonymus.

(19) Several ought not to join in a Writ to reſtore.

A Mandamus went to reſtore nine Perſons to the Place and Office of Common-Council Men; the Conſtitution was returned, and that theſe nine were debite amoti. Holt C. J. The Writ ought to be quaſhed, there ought not to be nine Perſons

in one Writ; the Amotion of one is not the Amotion of another; their Interests are several, and they may have been removed for several different Causes; one for one Fault, and another for another. How can we grant a joint Restitution to them? Eyre was of the same Opinion.

MARRIAGES.

Alleyne & Ux' *versus* Grey. Trin. 1 W. & M. B. R.

(1) In Debt by *Bar. & Fem*; *Nunques accouple* is no Plea.

IN Debt on a Bond, the Defendant pleaded ne unques accouple in loyal Matrimony: Plaintiff demurred, and had Judgment, for it alters the Trial; instead of trying per Pais, it puts the Trial on a Certificate from the Ordinary; and, 2dly, It admits a Marriage, but denies the Legality of it; whereas a Marriage de facto is sufficient, and whether Legal or not Legal, is no ways material.

Jeffon *versus* Collins. Pas. 2 Ann. B. R.

(2) Contract *per verba de præsenti*, or *de futuro*, equally cognizable in the Spiritual Court, and their Sentence binding.

MR. King moved for a Prohibition to stay a Suit in the Spiritual Court, upon a Contract of Marriage per verba de præsenti, suggesting that the Contract was in Fact per verba de futuro, for which, if not performed, the Party had Remedy at Common Law: Holt C. J. said, That tho' it were per verba de futuro, yet it was a matrimonial Matter, and the Spiritual Court had Jurisdiction, and this was the great Objection against Actions at Law, when first brought up in these Cases; but in answer to this it was held, That the Remedy in the Spiritual Court was waived by betaking himself to Damages for the Breach: Also he said, That a Contract per verba de præsenti, was a Marriage, viz. I marry you: You and I are Man and Wife; and this is not releaseable: Per verba de futuro; I will marry you, I promise to marry you, *&c.* which do not intimate an actual Marriage, but refer it to a future Act, and this is releaseable, and as it is releaseable, the Party may admit the Breach and demand

Satisfaction: He alſo ſaid, he remembred this Caſe upon Evidence; Aſſumpſit in Conſideration, That the Plaintiff promiſed to marry the Defendant, the Defendant promiſed to marry him; upon Evidence it was proved, That there was a Promiſe, yet the Defendant producing a Sentence in the Spiritual Court, in Diſaffirmance of that Contract, it was held good Counter-Evidence, and the Plaintiff was nonſuit. A Prohibition was denied.

Wigmore's *Caſe*. Mich. 5 Ann. B. R.

(3) Contract *per verba de præſenti*, is a Marriage.

THE Wife ſued in the Spiritual Court for Alimony: In fact, the Husband was an Anabaptiſt, and had a Licence from the Biſhop to marry, but married this Woman according to the Forms of their own Religion. Et per Holt C. J. By the Canon Law, a Contract per verba de præſenti, is a Marriage: As, I take you to be my Wife: So it is of a Contract, per verba de futuro, viz. I will take, *&c.* If the Contract be executed, and he does take her, 'tis a Marriage, and they cannot puniſh for Fornication. Upon a Prohibition to the Spiritual Court of Peterborough.

Marſhal and Marſhalſea.

Anonymus. Mich. 9 Will. III. B. R.

(1) Bond to the Marſhal to be a true Priſoner, good.

PER Holt C. J. it was adjudged in the Caſe of Sir Jo. Lenthall verſus Cooke, That the Marſhal might take a Bond to be a true Priſoner; but not to receive or take any Thing of Advantage or Profit to himſelf, and that if he did, the Bond was void at Common Law.

Anonymus. Mich. 10 Will III. B. R.

A Prohibition was prayed to the Marſhalſea, becauſe they refuſed to admit a Plea, that neither of the Parties were de hoſpitio Regis. Per Holt C. J. This is not the Court mentioned in my Lord Coke's Caſe of the Marſhalſea. If the Cauſe of Action ariſe within twelve Miles of London, this Court holds Plea, tho' the Parties are not de hoſpitio Regis; the Plea is frivolous, and we will not interpoſe. But Trin. 11 W. 3. B. R. An Action of Debt was brought in the Marſhalſea, on a Judgment in B. R. and a Prohibition was granted.

(2) Juriſdiction of the Palace-Court.

Snow *verſus* Firebraſs. Mich. 1 Ann. B. R.

A Scire Facias was brought againſt the Bail, and a Breach aſſigned in this, That the Defendant had not rendered himſelf Priſonæ Marr' Mareſc' Domini Regis: Mr. King objected, That it was not good, without going on and ſaying, coram ipſo Rege exiſtentis, for the King has another Marſhal, viz. the Marſhal of the Houſhold. Et per Holt C. J. and Powell, The Earl Marſhal of England was by his Office Marſhal of the King's Bench, as appears by the Book of H. 6. and ſo continued till the Time of King James the Firſt, when this Office was derived out of it; ſo that the Marſhal of the King is the Marſhal of the King's Bench; no Body elſe can be underſtood; the other is Mareſchallus Hoſpitii, and never ſpoken of without that Addition.

The Office of Chamberlain of the King's Bench Priſon is inſeparably incident to the Office of Marſhal, and therefore a Grant of the Office of Marſhal, with a Reſervation of the Office of Chamberlain, is void. Per Holt C. J. Mich. 3 Ann. B. R.

(3) Earl Marſhal of *England* was formerly Marſhal of the King's Bench.

Maſter

Master and Servant.

Boson *versus* Sandford, *& al'*. Mich. 1 W. & M. B. R. Intr. Hill. 1 & 2 Jac. 2. Rot. 302.

(1) Goods are spoil'd by the Default of the Master of a Ship, employed by the Owners; the Owners are liable in respect of the Freight.

CASE against A. and B. Part-Owners of a Ship, for that he put Goods on Board, and the Defendants undertook to carry them safely for Hire, but yet were so negligent, that the Goods were spoiled; upon Not guilty pleaded, in Evidence it appeared, that C. and D. were also Part-Owners, and that the Ship was under the Care of a Master, to whom the Goods were delivered; and this being found specially, it was argued pro quer', That the Action is grounded on the Wrong, and may be against all, or any of the Proprietors: There was also another Doubt started, and that was, Whether the Owners were liable, when in Truth they did not undertake, but in fact the Master super se suscepit? Eyre Justice held, There was no difference between a Land-Carrier and a Water-Carrier, and that the Master of a Ship was no more than a Servant to the Owners in the Eye of the Law; and that the Power he has of Hypothecation, &c. is by the Civil Law. Et per Holt C. J. The Owners are liable in respect of the Freight, and as imploying the Master; for whoever imploys another, is answerable for him, and undertakes for his Care to all that make use of him. 2dly, The Court held, That all the Owners were liable, for they are charged in Point of Contract, as Imployers, and are all equally entitled to the Freight: Either Master or Owners may bring an Action for the Freight; but if the Owners bring the Action, they must all join; ergo they must all be joined; as the Freight belongs to all, so all are equally undertaking; and a Breach of Trust in one is a Breach of Trust in all; as where two make one Officer, the Act of one is the Act of the other. 3dly, The Court held this was not an Action ex delicto, but ex quasi contractu, and it was not the Contract of one but of all: That there was no other Tort but a Breach of Trust. Therefore the Court gave Judgment for the Defendant, because all the Owners were not joined.

Action lies against the Owners.

For he that imploys a Servant, undertakes for him.

But the Action must be brought against all the Part-Owners.

Jones *verſus* Hart. Mich. 10 Will. III. Coram Holt *C. J.* *At* Niſi Prius *at* Guildhall.

A Pawn-broker's Servant took a Pawn; the Pawner came and tendered the Money to the Servant; he ſaid he had loſt the Goods: Upon this the Pawner brought Trover againſt the Maſter, and it was held well, per Holt C. J. (2) Maſter liable for the Neglect of his Servant, not the wilful Wrong.

The Servants of A. with his Cart, run againſt another Cart, wherein was a Pipe of Sack, and over-turn'd the Cart and ſpoil'd the Sack; an Action lies againſt A. So where a Carter's Servant run his Cart over a Boy, 'twas held the Boy ſhould have his Action againſt the Maſter, for the Damage he ſuſtained by this Negligence. So in Lane and Cotton, a Letter with Bills in it was delivered at the Poſt-Office to a Servant; 'twas held, Caſe lay againſt the Poſt-Maſter and not againſt the Servant, unleſs he ſtole them, for then he was a Wrong-doer, as where a Gaoler ſuffers an Eſcape wilfully; otherwiſe if negligently. Per Holt C. J.

Domina Regina *verſus* Gouche. Mich. 1 Ann. B. R.

AN Order was made by the Juſtices on Gouche, reciting, That whereas 42 s. and 4 d. was due from him to J. S. for Work and Labour in Husbandry, they order him to pay the ſame; the Exception was, That it does not appear to be Statute-Wages, and ſuch only are within their Juriſdiction. Per Powell and Gould. Tho' the Statute gives them a Power only to ſet the Rate for Wages, and not to order Payment; yet grafting hereupon, they have alſo taken upon them to order Payment; and the Courts of Law are indulgent in Remedies for Wages, as appears by its ſuffering the Admiralty to have Cognizance of Mariner's Wages; and therefore they would intend it ſuch Wages as were within the Statute; and Gould J. cited a Caſe, the King againſt Dummer, An Order to pay for Days-Work and Labour done, which was held well; for the Court will intend it within their Juriſdiction upon general Words, unleſs the contrary appear upon the Face of the Order, as in the Caſe, 2 Jones 47. for a Coachman's Wages. Affirmed Holt abſente. (3) Order to pay 42 s being due for Work and Labour in Husbandry, tho' it don't appear ſuch Wages as the Statute directs.

Remedies for Wages are favoured in the ſuperior Courts.

Ward

Ward *versus* Evans. Hill. 2 Ann. B. R.

(4) Act of a Servant binds not his Master, unless he acts by Authority of his Master, or he consents.

WARD sent his Servant to receive a Note of 50l. of B. who went with him to Sir Stephen Evans's Shop, who indorsed off 50l. from a Note B. had upon him, and gave Ward's Servant a Note of 50l. upon one Wallis a Goldsmith, to whom the Note was carried the next Day by Ward's Servant: Wallis refused to pay, and that Day broke; upon this the Note was sent back to Sir Stephen Evans, who refused Payment, whereupon the Action was brought. Et per Cur'. It was held, 1st, That this was Money received by Sir Stephen Evans. 2dly, That the Act of a Servant shall not bind the Master, unless he acts by Authority of his Master, and therefore if a Master sends his Servant to receive Money, and the Servant, instead of Money, takes a Bill, and the Master, as soon as told thereof, disagrees, he is not bound by this Payment; but Acquiescence, or any small Matter, will be Proof of the Master's Consent, and that will make the Act of the Servant the Act of his Master.

Goldsmiths Notes are Payment conditionally only, without express Consent.

3dly, They held this was no Payment; for a Goldsmith's Note is only Paper, and received conditionally, if paid; and not otherwise, without an express Agreement to be taken as Cash.

4thly, They held, That the Party receiving such Note should have a reasonable Time to receive the Money, as in this Case, the next Day, and is not obliged as soon as he receives it, to go strait for his Money.

Domina Regina *versus* London. Trin. 3 Ann. B. R.

(5) In Order for Payment of Servants Wages, if it don't appear in what Service, the Court will intend it Husbandry.

ORDER was for Payment of Wages, reciting, That two Persons were retained by London, Overseer of the Works in the Gardens of Hampton-Court, at so much per Diem, and had work'd there so many Days; therefore the Order was, That London should pay them. Et per Cur'. The Statute extends only to Servants in Husbandry, not to Gentlemen's Servants, nor to Journeymen with their Masters: Had the Order been general, viz. to pay so much to two of his Labourers, &c. or two of his Servants, the Court should have supposed them Servants in Husbandry, but here is no Room for such an Intendment, since the contrary appears.

Merchants and Merchandize.

Jefferies *verſus* Legandra. Hill. 2 W. & M. B. R. Rot. 659.

ACTION on a Policy of Inſurance; the Defendant pleaded Non Aſſumpſit, and the Jury found the Policy, by which the Inſurers undertook againſt Perils of Sea, Pirates, Enemies, &c. from London to Venice, warranted to depart with Convoy. Et per Cur'. The Words, warranted to depart with Convoy, mean only, That he will leave the Port, and ſail with the Convoy, without any wilfull Default in the Maſter; therefore, if by Default of the Maſter, the Ship is ſeparated and taken, the Inſurers are not liable; but if there be no Default, the Maſter having done all that could be done, and the Ship is ſeparated and taken by Enemies, the Inſurers are liable; ſo if the Ship be loſt by Streſs of Weather, for they inſure againſt theſe by their own Agreement.

(1) In Policies warranted to depart with Convoy, ſhall be intended without wilful Default of the Maſter.

Lethulier's *Caſe*. Mich. 4 W. & M. B. R.

ACTION on a Policy of Inſurance by the Defendant at London, inſuring a Ship from thence to the Eaſt Indies, warranted to depart with Convoy; and ſhews, That the Ship went from London to the Downs, and from thence with Convoy, and was loſt. After a frivolous Plea and Demurrer, the Caſe ſtood upon the Declaration, to which it was objected, That here was a Departure without Convoy. Et per Cur'. The Clauſe, warranted to depart with Convoy, muſt be conſtrued according to the Uſage among Merchants, i. e. from ſuch Place where Convoys are to be had, as the Downs, &c. Holt C. J. contra, We take Notice of the Laws of Merchants that are general, not of thoſe that are particular Uſages: It is no part of the Law of Merchants to take Convoy in the Downs. Vide Yelv. 136.

(2) Warranted to depart with Convoy, ſhall intend from the Place of having Convoy.

Martin *verſus* Crump. Paſ. 10 Will. III. B. R.

(3) Survivorſhip. TWO joint Merchants make B. their Factor; one dies leaving an Executor; this Executor and the Survivor cannot join, for the Remedy ſurvives, but not the Duty, and therefore on Recovery he muſt be accountable to the Executor for that.

Green *verſus* Young. Hill. 1 Ann. B. R.

(4) Deviation diſcharges Policy from that Time only. IF after a Policy of Inſurance, a Damage happens, and afterwards, in the ſame Voyage a Deviation; yet the Aſſured ſhall recover for what happened before the Deviation, for the Policy is diſcharged from the Time of the Deviation only.

Vide Shower 189. Kemp and Andrews: The Remedy ſurvives, between joint Merchants, but not the Intereſt.

Anonymus. Hill. 1 Ann. B. R.

(5) Detention. A Ship inſured was in her Voyage ſeized by the Government, and turned into a Fireſhip: The Queſtion was, Whether the Inſurers were liable? Holt C. J. thought it was within the Word Detention, but the Cauſe was referred.

Bates *verſus* Grabham, *& al'*. Decemb. 3. 1703. Coram Holt *C. J.* *At* Niſi Prius *at* Guild-hall.

(6) Policy altered by Conſent after it was underwritten, well. IN Caſe on a Policy of Inſurance, upon Non Aſſumpſit pleaded, the Caſe was, Mr. Criſp being at the Weſt-Indies, ſent a Letter to Bates to inſure Goods on the Mary-Galley of St. Chriſtopher's, Captain A. Hill Commander, at London: Bates carried the Letter to Stubbs, who writ Policies, and he by Miſtake made the Aſſurance on the Mary, Captain Haſlewood Commander, &c. This Policy thus made was ſubſcribed by the Defendant: The Mary-Galley was loſt, and then Stubbs applies to the Inſurers to conſent to alter the Policy, to which they agreed, and the Miſtake was mended. It was objected at the Trial, that the Mary was a ſtouter Ship than the Mary-Galley, and that the Inſurers ought to have an increaſe of Premium for the Alteration: But it was held by Holt C. J. That the Action well lay, and that the Miſtake might be ſet right, and that Stubbs was a good Witneſs; and he cited this Caſe, which happened when Pemberton was Chief Juſtice. An Inſurance was made from Archangel to the Downs, and from the Downs to Leghorn; but

there was a Parol Agreement at the same Time, that the Policy should not commence till the Ship came to such a Place; and it was held the Parol Agreement should avoid the Writing.

Bond *versus* Gonsales. February 14. 1704. Coram Holt *C. J.* *At* Nisi Prius *at* Guildhall.

(7) Deviation or not, must be construed according to Usage.

CASE upon a Policy, which was to insure the William-Galley in a Voyage from Bremen to the Port of London, warranted to depart with Convoy: The Case was, the Galley set Sail from Bremen, under Convoy of a Dutch Man of War to the Elb, where they were joined with two other Dutch Men of War, and several Dutch and English Merchant Ships, whence they sailed to the Texel, where they found a Squadron of English Men of War and an Admiral: After a Stay of nine Weeks they set out from the Texel, and the Galley was separated in a Storm, and taken by a French Privateer, taken again by a Dutch Privateer, and paid 80 l. Salvage. And it was ruled per Holt C. J. That the Voyage ought to be according to Usage, and that their going to the Elb, tho' in fact out of the Way, was no Deviation; for till after the Year 1703, there was no Convoy for Ships directly from Bremen to London: And the Plaintiff had a Verdict.

The Mayor and Commonalty of London *versus* Wilks. Trin. 3 Ann. B. R.

(8) Merchant *quid?*

A Merchant includes all sorts of Traders as well and as properly as Merchant-Adventurers. Vide Spelm. Guilda, Dy. 279. b. A Merchant-Taylor is a common Term. Per Holt C. J.

MONEY.

Dixon *verſus* Willoughs. Mich. 8 Will. III. B. R.

Indebitatus Aſſumpſit in 13 *l.* 10 *s.* for nine Guineas, well.

IN Caſe upon four ſeveral Promiſes, there was a Verdict for the Plaintiff, and intire Damages: It was moved in Arreſt of Judgment, that one of the Promiſes was ill laid, viz. That whereas the Defendant was indebted to him in 13 l. 10 s. for nine Guineas, he promiſed to pay, &c. and ſays not, nine Guineas ad valorem, &c. as he ought, the Value being not aſcertained by Proclamation. Et per Holt C. J.

1ſt, Any Piece of Money coined at the Mint, is of Value as it bears a Proportion to other current Money, and that without Proclamation. The Unit was the old Piece, which was 20 s. In K. James the Firſt's Time, the Unit was by Proclamation raiſed 16 d. which was the Reaſon and Occaſion of the Coin of Guineas, and of their being 16 d. ſhort of the Unit.

2dly, There are Guineas of 40 s. apiece, and ſo we will intend theſe were, and that the Plaintiff was ſatisfied the reſt.

3dly, That it was not neceſſary to ſet forth the Number of the Guineas; for in an Indebitatus Aſſumpſit the Conſideration is only ſet forth to ſhew it was not a Debt by Bond, &c.

MONOPOLY.

A Grant of a Monopoly may be to the firſt Inventor by the 21 Jac. 1. and if the Invention be new in England, a Patent may be granted, tho' the Thing was practiſed beyond Sea before; for the Statute ſpeaks of new Manufactures within this Realm; ſo that if they be new here, it is within the Statute; for the Act intended to encourage new Deviſes uſeful to the Kingdom, and whether learned by Travel, or by Study, it is the ſame Thing. Agreed by Holt and Pollexfen, in the Caſe of Edgeberry and Stephens.

Monſtrans de Droit, &c.

Domina Regina *verſus* Maſon. Trin. 9 Ann. B. R.

IT was found by Inquiſition, That Ford had forfeited his Office of Warden of the Fleet, upon which it was ſeized into the Queen's Hands: One Maſon brought a Monſtrans de Droit in Chancery on the Inquiſition, and ſets forth a Title, and traverſes Ford's being ſeiſed of the Office, ſo that by Conſequence he could not forfeit it; the Attorney-General demurred: The Cauſe was brought into B. R. per proprias manus of the Lord Chancellor; and now it appeared that Maſon's Title, as ſet forth, was naught, whereupon Maſon, as Amicus Curiæ, inſiſted ſtill, That Ford had not forfeited, and ſo the Queen had no Title; and therefore it was urged, That no Judgment could be given for the Queen, and that the whole Record was here, and the

If the Plaintiff fails in his Title, he cannot take Advantage of Want of Title in the Crown, or of a Stranger's Title.

the Record being here, the whole Record was to be affirmed or ſubverted by the Judgment of this Court. Et per Cur'. The very Record of the Inquiſition it ſelf is not before us, but only the Record of the Monſtrans de Droit: For as to the Inquiſition, the Monſtrans de Droit recites it, and concludes prout patet per record. Inquiſitionis in filaciis Curiæ Cancellariæ; and the Monſtrans de Droit may ſet forth the Inquiſition, with an inter alia, and Oyer may be craved of it. 2dly, The Court held, That tho' the very Record of the Inquiſition was not ſo before the Court, as that they could quaſh it or ſubvert it, with reſpect to all Perſons or Parties; ſo as no other Perſon could at any Time after come into Chancery and ſhew his Right, for that would be inconvenient; yet it was here with reſpect to the Party Plaintiff in this Monſtrans de Droit, ſo that if thereby a Title appeared for him, the Court might give Judgment; and if the Inquiſition be falſified, it ſhall be ſet aſide, ſo far as to make Way for the Party's Right; and if the Party's Right can be collected from the Inquiſition, it ſhall be affirmed by the Judgment; ſo was Holland's Caſe, and ſo is Kel. 93. 3dly, They held, That if it appears that he that ſued the Monſtrans de Droit has no Right, he cannot mend his Caſe by Exceptions to the Inquiſition taken as Amicus Curiæ, tho' by thoſe Exceptions it appears the Queen has no Right, or that a Stranger has Right; for the Party that ſues a Monſtrans de Droit, is a Plaintiff and may be nonſuit, 4 H. 6. 12. And if he fails in his own Title, he is gone as effectually as if he were Nonſuit, and no Judgment needs to be given for the Queen; accordingly Judgment was given here, quod nil capiat per billam ſuam de Monſtratione ſua præd'.

The Record of the Inquiſition is only before the Court, with reſpect to the Plaintiff.

MORTGAGES.

Lord Ossulston *contra Lord* Yarmouth. Decemb. 1707. In Canc.

THE Earl of Yarmouth made a Mortgage to my Lord Ossulston, with a Proviso, That if the Interest was behind six Months, that then that Interest should be accounted Principal, and carry Interest. Et per Cowper Lord Chancellor, this Clause was decreed to be vain, and of no use, saying, No Precedent had ever carried the Advance of Interest so far, and that an Agreement made at the Time of the Mortgage will not be sufficient to make future Interest Principal; but to make Interest Principal, it is requisite that Interest be first grown due, and then an Agreement concerning it may make it Principal.

(1) *Proviso*, That future Interest, if not paid, shall be taken as principal, and bear Interest, is void.

Taylor *contra* Wheeler. Mich. 8 Ann. In Canc:

A Copyholder in Fee surrendered to the Use of the Mortgagee in Fee, and became Bankrupt before Presentment, and there never was any Presentment made; and the Question was, Whether the Assignee of the Commissioners of Bankrupcy, or the Mortgagee should be preferred? Et per Cowper Lord Chancellor, Tho' the Surrender was void in Law for want of a Presentment, and that might be the Laches of the Mortgagee in not procuring it; yet the Surrender was a Lien, and bound the Land in Equity, and the Assignee ought not to be in a better Case than the Bankrupt, who was plainly bound in Equity by this defective Conveyance. Et come moy semble, he became a Trustee for the Purchasor.

(2) Mortgagee or Purchasor Precedent, tho' by defective Conveyance shall be preferred before Assignees of Commissioners of Bankrupt.

Cope *contra* Cope. In Canc.

IF a Man mortgage Lands, and covenants to pay the Money, and dies, the personal Estate of the Mortgagor shall, in favour of the Heir, be applied to exonerate the Mortgage: So it is, tho' there was no Covenant, if the Mortgagor had the Money; be-

(3) Where personal Estate shall be applied to pay off Mortgage in Exoneration of Land.

because it was his Debt, and he is bound to make it good tho the Land be a defective Security; but if Grandfather mortgages and covenants to pay, and the Lands discend to his Son, and his Son dies, having a personal Estate and a Son, the Son's personal Estate shall not go in aid of this Mortgage: A. mortgages his Land to B. and after sells it to C. for 1000l. which includes the Mortgage-Money; C. the Purchasor shall pay the Mortgage, for he has made it a Debt in himself: But it is to be understood that this Exoneration is not to be allowed, unless there be personal Assets sufficient to pay all Legacies; for the Mortgage shall be paid out of the Land if there be not personal Assets to pay the Legacies; and if by such Payment Assets fall short, the Legatees may make such Mortgagee refund.

MOTION.

Hinton *versus* Hern. Hill. 9 Will. III. B. R.

(1) Franchise cannot be allowed on Motion, unless it has been formerly pleaded, and is upon Record.

IN a Motion for a Prohibition to the University of Cambridge, the other Side insisted on their Privileges, which are confirmed by Parliament. Et per Cur'. You must plead them. The difference is, where Franchises have been once allowed on Plea, and are upon Record in Court, there they may be allowed upon Motion ever after; but where they have not been allowed, it is otherwise; and so it was held and done, between Castle and Litchfield, where the Franchise of Oxford was pleaded; and so they were obliged to do here.

Domina Regina *versus* Layton. Pas. 4 Ann. B. R.

(2) Where Fine is set for Forcible Entry, Conviction not quash'd on Motion.

UPON a Conviction of Forcible Entry, if a Fine be set, the Conviction cannot be quashed upon Motion, but the Defendant must bring his Writ of Error; otherwise if no Fine be set, for then it may be quashed upon Motion: Per Cur'.

Names of Purchaſe and Dignity.

(1) Indictment for aſſaulting a Duke's eldeſt Son, ſtyling him by his Father's ſecond Title according to common Parlance, ill.

AN Indictment was preferred againſt two Chairmen for a Battery upon Thomas Lord Marquiſs of Carmarthen; who was called up to the Houſe of Lords by the Name of Lord Osborn; and it was held by the Chief Juſtice, that there was no ſuch Perſon, or at leaſt the Duke of Leeds was the Perſon, and not the Proſecutor. At the Old Baily one was indicted for ſtealing the Goods of the Earl of Kingſton, who was the eldeſt Son of the Marquiſs of Dorcheſter, and the Defendant was acquitted by the Opinion of all the Judges, for he was only Mr. Pierpoint. In the Houſe of Lords, complaint was made againſt the Marquiſs of Carmarthen, for Breach of Privilege, and the Houſe ſaid, there was no ſuch Perſon: The Defendants were acquitted.

The Preſident and College of Phyſicians, London, *verſus* Salmon. Trin. 13 Will. III. B. R.

(2) Corporation may ſue by their Name of Incorporation, notwithſtanding an expreſs Power given to ſue by another.

DEBT was brought in the Name of the Preſident and College of Phyſicians, on the Stat. 14 H. 8. c. 15. for the Penalty of 5 l. per Month for practiſing Phyſick in London without Licence; and upon Demurrer to the Declaration, this Exception among others was taken, That the Action ought to be brought in the Name of the College only, or the Preſident only; the Words of the Patent being, Quod ipſi per nomina Preſidentis Collegii, ſeu communitatis facultatis Medicinæ, London, ſhould ſue and be ſued; to this it was anſwered, That they are incorporated by the Name of Preſident and College, and have in Conſequence of that a Power to ſue and be ſued by that Name, and this Power is not taken away by the additional affirmative Power which is farther given to them. 10 Co. 28. b. 30, 123. 1 Ro. Ab. 513. Fitz. Brief 485. 5 E. 4. 20. 16 H. 7. 1. 29 H. 6. 4. 44 E. 3. 6. b. 11 H. 7. 27. 13 H. 7. 14. And Judgment was given for the Plaintiff.

Domina Regina *verſus The Inhabitants of* Barking, Needham-Market, *and* Darmeſden *Hamlets.* Paſ. 5 Ann. B. R.

(3) On a *Certiorari* to remove Orders, the Name of the Pariſh in the Writ, and that in the Order, muſt appear to be the ſame.

A Certiorari iſſued to remove all Orders concerning the Inhabitants of the Pariſh of Barking, Needham-Market, and Darmeſden Hamlets; and the Orders mentioned Barking, and Needham, and Darmeſden Hamlets, without Market. Serjeant Weld argued that they muſt be taken to be the ſame. 1 Sid. 64. Writ was to the Juſtice of Cheſter; Return was by the Chief Juſtice; and 1 Ro. 334. A Ward and a Liberty of a City is the ſame: Holt C. J. the Chief Juſtice of Cheſter, in his Patent, is call'd Juſticiarius, and there was but one till 18 Eliz. c. 8. which gave the Queen Power to make another, who is ſtyled alter Juſticiarius, and the firſt Juſticiar', and ſo our Writs are directed; we therefore take Notice of him, and do not regard his calling himſelf Chief Juſtice. The Reaſon of 1 Ro. 334. is, That a Ward of a City is no Venue, therefore the Venue is from the City: A Jury may come from a Lieu conus out of a City, not from a Lieu conus within a City. If Needham and Needham-Market be the ſame Hamlet, ſo it ſhould have been returned; but we cannot take Notice that there is no ſuch Hamlet as Needham-Market. If Treſpaſs quare Clauſum fregit at Needham were brought, and the Plaintiff proved a Breaking at Needham-Market, he muſt be nonſuit.

Novel Assignment.

Coke *versus* Evans. Trin. 2 Ann. B. R.

TRESPASS for taking the Cattel in D. The Defendant pleaded, That the Locus in quo was twenty Acres, &c. where he had Common, and justifies for Damage-feasant; the Plaintiff replied, that he took them in such a Place, [viz. another] And it was agreed per Holt C. J. and Powell, That the Plaintiff might make a new Assignment, which they told Mr. Southouse, subridendo neither confessed nor avoided his Bar, but gave it the go-by.

(1) Where Defendant by Plea makes a transitory Trespass local, the Plaintiff may make a new Assignment.

Helwis *versus* Lomb. Hill. 2 Ann. B. R.

TRESPASS for taking and carrying away his Goods in D. The Defendant pleaded that the Locus in quo was his Freehold, and that he took the Goods Damage-feasant, &c. The Plaintiff demurred generally, and had Judgment; for the Action being transitory, there is no Locus in quo supposed: Otherwise in Trespass quare Clausum fregit in D. the Clausum is a Locus in quo; but in the principal Case there is no Place in particular supposed, only D. is alledged for a Venue; therefore if the Defendant will make the Place material, it must come on his Part to shew a Place certain: Also in Trespass quare clausum fregit in D. if the Defendant plead Liberum tenementum, and Issue be join'd thereupon, it is sufficient for the Defendant to shew any Close, that is his Freehold; but if the Plaintiff gives the Close a Name, he must prove a Freehold in the Close named: So adjudged in C. B. and the Judgment affirmed in B. R. upon a Writ of Error.

(2) Where the Place is made material by the Defendant's Plea, he must shew it with Certainty.

NISI PRIUS.

Bullock *verſus* Parſons. Paſ. 4 Ann. B. R.

Diſtringas with a Blank for the Cauſe of Action, amendable.

IN Debt; after Verdict for the Plaintiff Mr. Eyre moved in Arreſt of Judgment, that the Diſtringas was with a Blank, and Debiti (the Cauſe of Action) omitted; ſo it was a Diſtringas in another Cauſe: On the other Side it was urged to be as no Diſtringas, and aided by Verdict; and that it was amendable. Hob. 246. 2 Cro. 528. The Court made two Queſtions, 1ſt, Whether the Judge of Niſi Prius had Authority to try this Iſſue? Et per Holt C. J. The Authority of the Judge of Niſi Prius is not by the Diſtringas, but by the Commiſſion of Aſſize, for it is the 13 E. 1. c. 30. which gives the Trial by Niſi Prius, and by that Statute, the Trial by Niſi Prius is given before Juſtices of Aſſize; and at firſt theſe Trials by Niſi Prius were always had and made upon the Venire Facias, and indeed the Clauſe of the Niſi Prius is by the 13 E. 1. c. 30. expreſly ordered to be inſerted in the Venire Facias; and Trials by Niſi Prius continued to be upon the Venire Facias till 42 E. 3. c. 11. which requires, that the Names of the Jurors be firſt returned into Court. By this Act two Inconveniencies were remedied. 1ſt, The Party might now be prepared to make his Challenges, the Panel being firſt returned into Court, which was not before; and, 2dly, The Defendant was prevented by this means to caſt an Eſſoin at Niſi Prius, which was uſed frequently before; for by Marlb. c. 13. the Defendant was allowed one Eſſoin, and that after Iſſue joined upon the Return of the Venire: By Conſequence, when that was returned at Niſi Prius, he could eſſoin at Niſi Prius; but now it is returned above, he muſt eſſoin above, and cannot now eſſain at the Trial, becauſe the Trial is upon the Diſtringas and not upon the Venire.

Authority of a Judge of *Niſi Prius* is by Commiſſion of Aſſize.

No *Diſtringas* is aided by Verdict, ill *Diſtringas* not.

2dly, The Court held no Diſtringas, or the Want of a Diſtringas to be aided by Verdict, but an ill Diſtringas was not; and remembered a Caſe, wherein Saunders of Counſel, at the Bar, dropped the Diſtringas out of his Hand, that he might want a Diſtringas, which would be aided, and not keep and ſhew an ill one, which would be naught. Alſo they held it amendable, and gave Judgment pro Quer'.

NONSUIT.

Allington *verſus* Vavaſor. Trin. 12 Will. III. B. R.

A Latitat was ſued out againſt four Defendants in Treſpaſs; the Plaintiff was nonſuit for want of a Declaration, and the Defendant's Attorney entered four Nonſuits againſt him; and it was held to be irregular, becauſe the Treſpaſs is joint, and tho' the Plaintiff may count ſeverally againſt the Defendants, yet it remains joint till it is ſevered by the Count. (1) In Treſpaſs againſt four, there can be but one Nonſuit for want of declaring.

Lover *verſus* Salkeld. Trin. 12 Will. III. B. R.

TRESPASS againſt two Defendants, and Verdict for the Plaintiff; one Defendant being an Infant, the Plaintiff took Judgment againſt the other, and entered a Non Proſ. after the Judgment againſt the Infant: Upon this Judgment the Plaintiff ſued out Execution, upon which Error was brought: And Mr. Northy objected, That the Execution and Judgment could not vary from the Demand of the Writ: Raymond contra, Torts are ſeveral, and the Plaintiff may as well enter a Non Proſ. quoad one Defendant upon a Trial by Verdict, as if one Defendant had demurred, and Verdict againſt the other, and that a Non Proſ. may be entered after Judgment as well as before; and for Non Proſ. entered after Judgment, he cited 15 E. 4. 26. 14 E. 4. 6. Hob. 71. 1 Ro. Rep. 379. 2 Ro. Abr. 100. pl. 5. Holt C. J. ſaid, he ſuppoſed thoſe were interlocutory Judgments wherein it might well be, but a final Judgment differed; for that being once wrong, a ſubſequent Entry would not ſet it right. Adjournatur. (2) *Non Proſ.* may be entered as to one Defendant after interlocutory Judgment, not after final.

Cooke *verſus* Foſter. Trin. 1 Ann. B. R.

IF a Man appear at the Day of the Return of the Proceſs and put in Bail, tho' he never was arreſted nor the Proceſs returned; yet if the Plaintiff does not declare againſt him in two Terms, a Non Proſ. may be entered againſt him. (3) Where the Defendant files Bail without Arreſt, Plaintiff may be *Non Proſ'd.*

Goddard

Goddard *verſus* Smith. Mich. 3 Ann. B. R.

(4) A Diſcharge by Nolle proſequi upon an Indictment, is not ſufficient to maintain an Action for a malicious Proſecution. Vide this Caſe, Title Action ſur le Caſe, pl. 11. p. 21.

(5) Entries of *Non Proſ.*

Vide Co. Ent. 650. *d.* In Treſpaſs, ſeveral Iſſues, one found for the Plaintiff, *& ſuper hoc idem quer. gratis hic in Cur. cognovit ſe ulterius nolle proſequi verſus le Defend. de cæteris exitibus*, upon which there is an *eat inde ſine die*, and the Plaintiff has Judgment for the other: *Et vide ibi* 676, *&c.* Iſſue for part, and Demurrer for part, in an Action of Treſpaſs, and Verdict *pro Quer'* upon the Iſſue; upon which the Plaintiff enters a *Non Proſ.* in this Manner: *Et ſuper hoc idem quer' quoad materiam prædict' unde partes prædict' poſuerunt ſe in judicium fatetur ſe nolle materiam illam, &c. ulterius quoviſmodo intromittere: Ideo idem defendens eat inde ſine die, &c. & ſuperinde idem querens petit judicium de damnis prædict', &c. Ideo conſideratum eſt*, That the Plaintiff recover; and that the Plaintiff be amerced *pro falſo clamore* as to the reſt, *& quod defendens eat inde ſine die. Vide ibi* 28. Jury came in with their Verdict, and the Plaintiff was nonſuit, and the Entry is, *ſuper quo querens ſolemniter exactus non revenit, nec eſt proſecutus billam ſuam, ſuper quo conſideratum eſt quod nil capiat.*

Greeves *verſus* Rolls. Paſ. 4 Ann. B. R.

(6) Judge of *Niſi Prius* may receive a *Non Proſ.* at the Aſſizes.

THE Judge of Niſi Prius may receive a Non Proſ. at the Aſſizes; ſo it was held by two Judges, and that Judgment was affirmed in the Houſe of Lords againſt the Opinion of Holt C. J. For before the Statute of York, the Juſtices of Niſi Prius had no Power to record a Nonſuit or Default in the Country, and conſequently have no Power now to enter a Non Proſ. which is not within that Statute. At Common Law they could not record a Non Proſ. Default or Nonſuit. Nota, The principal Caſe was, Ejectment againſt ſeveral, who all entered into the Rule of Leaſe, Entry and Ouſter; at the Aſſizes ſome would confeſs, and others would not: The Plaintiff, as to thoſe who would not confeſs, entered a Non Proſ. and went on againſt the others, and recovered; upon this a Rule was made, That in like Caſes the Plaintiff ſhould go on againſt thoſe who would confeſs, and as to thoſe who would not, ſhould be nonſuit; but that the Cauſe of the Nonſuit ſhould be expreſſed in the Record, viz. becauſe thoſe Defendants would not confeſs Leaſe, Entry and Ouſter; and upon the Return of the Poſtea, the Court would be informed what

In Ejectment againſt ſeveral, if ſome confeſs Leaſe, *&c.* and others do not, the Plaintiff may go on as to the former, and be nonſuit as to the latter.

Lands were in the Poſſeſſion of thoſe Defendants, that the Judgment might be entered againſt the caſual Ejector as to them.

It was agreed in the arguing of this Cauſe, That where there are ſeveral Defendants, and they ſever in Plea, whereupon Iſſue is joined, that the Plaintiff may enter a Non Proſ. as to one Defendant at any Time before the Record is ſent down to be tried at Niſi Prius.

Where ſeveral Defendants ſever in Plea, Plaintiffs may enter *Non Proſ.* againſt one, any Time before Record ſent down.

NOTICE.

Lazier *verſus* Dyer. Mich. 2 Ann. B. R.

ISSUE being joined and entered, as of Trinity-Term, the Plaintiff reſted till the Trinity-Term following, and then gave Notice of Trial after the Term; and a Venire Facias and Diſtringas was taken out in the Vacation, but teſted and entered as of the Term. Et per Cur'. This is not ſufficient Notice; for tho' in Law, this was a Proceeding within the Term; yet in Fact it was a Proceeding in Vacation, and therefore there was not a Term's Notice of Trial.

(1) If there be no Proceeding *in fact* within four Terms, there muſt be a Term's Notice of Trial.

Smith *verſus* Goff. Paſ. 4 Ann. B. R.

PLAINTIFF declares, That whereas H. owed him 30 l. by Bond, the Defendant promiſed, that if the Plaintiff delivered up the ſaid Bond, he would pay him the ſaid 30 l. and ſays, he delivered up the ſaid Bond to H. unde the Defendant had Notice, and had not paid it. On Non Aſſumpſit pleaded, Verdict was for the Plaintiff: Upon Motion in Arreſt it was held, 1ſt, That Delivery muſt be intended to the Obligor, for that is properly a Delivering up; and delivering up muſt be conſtrued the moſt effectual Delivering; which is ſuch as that the Bond may be cancelled. 2dly, There needs no Notice, becauſe the Defendant knew whom to reſort to; and the Difference is, where a Perſon is named, and where not.

(2) Notice not neceſſary to be alledg'd, where the Thing can be intended to be known without it.

NU-

NUSANCES.

Rex & Regina *versus* Wilcox. Hill. 1 W. & M. B. R.

(1) Fine pardoned by general Pardon, but Abatement not excuſed.

THE Owner of the Glaſs-houſe at Lambeth was indicted for maintaining that Houſe, being a Nuſance, and was convicted and fined; and now it was moved, That by the Act of general Pardon the Defendant was excuſed and diſcharged, both as to the Fine and the Abatement of the Nuſance: But the Court upon Conſideration held, That he ſhould be diſcharged only as to the Fine and not as to the Abatement, for that is not a Puniſhment of the Party, but a Removal of that which is a Grievance to other People, and any Perſon may abate a common Nuſance.

Palmer *contra* Poultney. Mich. 8 Will. III. C. B.

(2) *Quod permittat* lies *de Ædificio.*

QUOD permittat proſternere quædam ædificia ad nocument', &c. And the Court held, That a quod permittat will lie de ædificio; but vide Noy 68. 3 Cro. 520, 402. It lies not de mole, F. N. B. 110. it lies de fabrica, F. N. B. 184. which the Court held as uncertain as ædificium. Alſo there may be a Building without a Name; and the Court held, That whether the Nuſance was by the Tenant or a Stranger, the Plaintiff may maintain a Quod permittat, for 'tis the ſame Prejudice to the Plaintiff, F. N. B. 124. Et Nota, In a Quod permittat the Jury have a View; but that did not weigh with the Court, for they ſaid that could be no direction to the Sheriff tho' it might to the Jury.

Lodie *verſus* Arnold. Mich. 9 Will III. B. R.

(3) In Juſtification by Abatement of a Nuſance, it need not be ſhewn that he did it, doing as little hurt as could be.

TRESPASS for breaking his Cloſe, and throwing Bricks and other materials there lying erga confectionem domus de novo erect' into the Sea; the Defendant ſhewed it was a Nuſance, being a Houſe built acroſs the Way, and that he pulled down the Walls, &c. and they rolled into the Sea: The Plaintiff demurred, and Judgment was given for the Defendant: And,

1ſt, The Court ſeemed to agree, That the Treſpaſs, which is juſtified, is not the Treſpaſs complained of, for that was throwing Materials there lying; this, which is confeſſed, is pulling down a Wall. 2dly, That when H. has a Right to abate a publick Nuſance, he is not bound to do it orderly, and with as little Hurt in abating it, as can be; and therefore was not anſwerable in this Caſe for the Rolling into the Sea. In the Caſe of James againſt Hayward, the Defendant might have opened the Gate without cutting it down; yet the Cutting was lawful; and the Court denied Hill's Caſe, 3 Cro. 384. that Matter of Aggravation need to be anſwered. But, 3dly, The Court held, That the Declaration was repugnant and inſenſible; there could not be Materials towards the Building of a Houſe Erect', which is already built.

Roſewell *verſus* Prior. Mich. 10 Will. III. B. R.

(4) In Caſe for ſtopping Lights, it muſt appear that the Lights were ancient.

IN an Action upon the Caſe for erecting a Shed upon the Defendant's Ground, ſo near the Plaintiff's Houſe that it ſtopp'd up his Lights; the Plaintiff declared, that he was poſſeſſed of a Houſe which had Windows, per quas lumen inferebatur & inferri conſuevit: After Verdict for the Plaintiff, it was moved in Arreſt of Judgment, that the Houſe was not ſaid to be an ancient Meſſuage, and the Defendant appeared not to be a Wrong-doer; for one may erect a Shed on his own Ground againſt another's Windows, if they are not ancient Lights. 3 Cro. 118. And all the Precedents of ſtopping Lights have it, either antiquum Meſſuagium or antiqua lumina. 1 Cro. 325. Pop. 170. 2 Cro. 373. Yelv. 215. Sed per Cur'. The Word conſuevit imports Uſage Time out of Mind, and we muſt intend, after Verdict, That Uſage Time out of Mind was proved; and ſo indeed it was in this Caſe, for otherwiſe the Jury could not have found for the Plaintiff. The Court ſeemed to think this Declaration would not have been good upon Demurrer.

Conſuevit after Verdict in ſuch Action, imports Uſage Time out of Mind.

Dominus Rex *verſus* Roſwell. Hill. 10 Will. III. B. R.

(5) H. erects a Houſe which ſtops my Lights, I may pull it down.

IF H. builds a Houſe ſo near mine, that it ſtops my Lights, or ſhoots the Water upon my Houſe, or is any other Way a Nuſance to me, I may enter upon the Owner's Soil and pull it down; and for this Reaſon only a ſmall Fine was ſet upon the Defendant in an Indictment for a Riot in pulling down ſome part of a Houſe, it being a Nuſance to his Lights, and the Right found for him in an Action for ſtopping his Lights.

Roſewell *verſus* Prior. Hill. 13 Will. III. B. R.

(6) A Tenant for Years erects a Nuſance, and makes an Under-Leaſe to B. Plaintiff may have an Action againſt either.

IN an Action upon the Caſe, for that the Plaintiff being ſeiſed of an ancient Houſe and Lights, the Defendant had erected, &c. whereby they were ſtopp'd. There was a former Recovery for this Erection, and this Action was for the Continuance; and the Caſe was, Tenant for Years erected a Nuſance, and afterwards made an Under-Leaſe to J. S. The Queſtion was, Whether after a Recovery againſt the firſt Tenant for Years for the Erection, an Action would lie againſt him for the Continuance after he had made an Under-Leaſe? Et per Cur'. It lies; for he transferred it with the original Wrong, and his Demiſe affirms the Continuance of it: He hath alſo Rent as a Conſideration for the Continuance, and therefore ought to anſwer the Damage it occaſions. Vide Jones 272. Receipt of Rent is Upholding. 2 Cro. 372, 555. The Action lies againſt either at the Plaintiff's Election.

Domina Regina *verſus* Wigg. Paſ. 4 Ann. B. R.

(7) Keeping Swine in a City, a Nuſance at Common Law.

INDICTMENT for keeping Hogs in ſome of the back Streets of London, contra formam Statuti. Mr. Whitacre moved to quaſh it, becauſe the Swine are forfeited by the Stat. 2 W. & M. Seſſ. 2. cap. 8. ſect. 20. Ergo no Indictment lies, at leaſt not contra formam Statuti; he compared it to the Caſe of the Queen againſt Watſon, which was an Indictment for keeping an Alehouſe, and held not to lie, becauſe there is another Remedy: Curia; Where a new Penalty is applied for a Matter, which at Common Law was an indictable Offence, as in this Caſe for keeping Swine in a City, which is a Nuſance, either Remedy may be purſued; but where the Statute makes the Offence, that Remedy muſt be taken which the Statute gives: And as to its being contra formam Statuti, that is Surpluſage; but if that was a Fault, they ſaid, they would not quaſh it, being for a Nuſance, but he ſhould demur; accordingly it was demurred to, and came on in the Paper, and Judgment given for the King. Afterwards Mr. Whitacre moved to ſet aſide the Judgment, alledging Surprize and Want of Notice. Sed non prevaluit; But no Counſel appeared for the Defendant when Judgment was given.

Where the Statute makes the Offence, no other Remedy can be purſued but what the Statute gives; otherwiſe of a Crime indictable before.

Oaths and Affidavits.

Salloway *verſus* Whorewood. Mich. 8 Will. III. B. R.

UPON a Rule to ſhew Cauſe, the Plaintiff offered ſeveral new Affidavits, and this Diverſity was taken, viz. Where they contain new Matter, and where they tend only to confirm what was alledged and ſworn when the Rule was made; in the later Caſe they may be read, not in the former.

(1) Where upon ſhewing Cauſe new Affidavits may be read to ſupport the Rule.

Dominus Rex *verſus* Jones. Hill. 8 Will. III. B. R.

IF Affidavits taken before Commiſſioners in the Country, according to 29 Car. 2. c. 5. be expreſſed to be in a Cauſe depending between A. and B. and there is no ſuch Cauſe in Court, they cannot be read, becauſe the Commiſſioners have no Authority to take them, and there can be no Perjury; otherwiſe if there be a Cauſe in Court, and this concerns ſome collateral Matter.

(2) Affidavits taken before Commiſſioners, according to 29 *Car.* 2. *c.* 5. muſt be in a Cauſe in Court.

DAvis and Carter ſtood in the Pillory, and the Court would not allow their Affidavits to be read; Hill. 7 W. 3. B. R. But Mich. 4 Ann. B. R. a Motion was made to ſet aſide a Judgment for Irregularity on the Defendant's Affidavit; and Mr. Whitacre objected to the reading it, becauſe he was convict of Perjury. Et per Holt C. J. Muſt he therefore ſuffer all Injuries and have no Way to help himſelf? Powell J. You ought to have the Record of Conviction in your Hand when you make this Objection. But per Holt C. J. If he had, it would be nothing to the Purpoſe.

(3) Where an Affidavit of a Perſon pilloried may be read.

OBLIGATION.

Henderſon *verſus* Foſter: Hill. 3 W. & M. B. R.

(1) *Sex triginta libris*, held well.

IN Debt the Plaintiff declared on a Bond, in trigint. & ſex Libris ſolvend', &c. and upon Oyer the Words of the Bond were, ſex trigint' libris, and it was held well, and no Variance; for it ſhall be all taken as one Word, as tres vigint' dies Junii, was taken for the 23d of June. 1 Cro. 261.

Cromwell *verſus* Grunſden. Paſ. 10 Will. III. B. R.

(2) *Quadrans libris* in a Bond.

IN Debt upon an Obligation, the Plaintiff declared, Quod cum Robertus Erlin, primo die Julii 1674. per ſcriptum ſuum Obligatorium conceſſit ſe teneri & firmiter obligari in Quadragint. libris, &c. Et profert, &c. cujus dat. eſt eiſdem die & anno. Upon non eſt factum pleaded, the Jury found the Defendant made a Deed in hæc verba, and that was, in premid. vigin in quadrans libris, dated the 1ſt of July, Anno Regni Car. 2. Millimo ſexcent. ſeptua' q^to^, and ſigned Robert Erlwin, condition'd to pay 20 l. and if this be the ſame Deed, &c? Et per Cur'.

Bond made by *Erlin*, ſubſcrib'd *Erlwin*, Variance not material.

1ſt, The Variance between the Name ſigned, which is Erlwin, and the Name in the Obligation, which is Erlin, is not material, becauſe Subſcribing is no eſſential Part of the Deed; Sealing is ſufficient: The Bond is a Deed without it, and ſo it is of the Year of the King. Vide Yelv. 193.

Inſenſible Words rejected.

2dly, The Court held the Words in premid vigin. and alſo the Anno Regni Car. 2. Millimo ſexcent. ſeptua' q^to^, to be void for Inſenſibility; and being inſenſible ſhall be rejected, the reſt being Senſe without them.

Sum in the Obligation expreſs'd in inſenſible Words, explain'd by the Condition.

3dly, They held that the Word quadrans had been void and inſenſible, if it had ſtood by it ſelf, as in Caſe there had been no Condition, or if the Condition had been collateral; but ſince it has relation to the Condition, they would take it to be explained by the Condition, and to ſignify 40 l. there being ſomewhat like quatuor or quadragint. in it, and there are Caſes as ſtrong and of as odd Words. Hob. 119. Quamquegenta for 500 l. Yelv. 95. Cro. Car. 147. Cro. Jac. 208. 1 Brownl. 62. 2 Ro. Ab. 146, 147. Hob. 19. doubted. In moſt Caſes where the Gent. or Gint. or the Sex or

Sept. are right, the Obligation has been held well. Vide 2 Jones 48. 1 Cro. 416, 418. 2 Cro. 338.

4thly, An impoſſible Date is no Date; and where there is no Date, the Plaintiff nevertheleſs muſt declare of it as made at a certain Time, and it is better to reſt there without cujus dat. eſt eiſdem, &c. or gerens dat. eiſdem; for that ties it up to the Bond mentioned in the Declaration, and if that be taken to be the expreſs Date, then there is a Variance; and the Court held, That if the Plaintiff's Declaration had been gerens dat. it had certainly been naught, becauſe that could refer to nothing but the expreſs Date; but being cujus dat. the Court would intend it of the real Date, which is the Delivery, and not of the expreſs Date; becauſe that being inſenſible, and as no Date, it could not properly be applied to that. Vide 2 Yelv. 193.

Impoſſible Date is no Date, and the Plaintiff muſt declare of a Time of making.

Gerens dat. muſt be underſtood of the expreſs Date; *cujus dat.* may be the Delivery.

And the Chief Juſtice denied the Caſe 2 Cro. 136. and held, That if H. declares on a Bond, as bearing Date the 6th of May, he cannot upon non eſt factum give in Evidence a Bond bearing Date at another Day; but he may give in Evidence a Bond that bears Date the 6th of May, tho' it was delivered at another Day. Adjudged.

Wells *verſus* Treguſan. Mich. 7 Ann. B. R.

DEBT on a Bond for 100l. Defendant demands Oyer of the Condition, which was, Whereas the Defendant is truly indebted to the Plaintiff in 50l. Now the Condition is ſuch, That if the Defendant do not pay the ſaid 50l. on or upon, &c. Then the Obligation to be void, &c. and pleads, That he did not pay the ſaid 50l. The Plaintiff demurred and had Judgment, for when the Condition recites a Debt, and after lays an Obligation not to pay it, 'tis in that repugnant. Vide 1 Sid. 105. 1 Lev. 77. 39 H. 6. 10. a.

(3) Condition of a Bond (reciting a Debt) not to pay, is repugnant.

Occu-

Occupant and Occupancy.

Oldham *verſus* Pickering. Mich. 8 Will. III. B. R.

Eſtates *pur auter vie* are only Aſſets for the Payment of Debts, not of Legacies, unleſs given thereout expreſly; nor diſtributable.

IN Attachment ſur Prohibition the Caſe was briefly thus: Thomas Oldham being ſeiſed of a Meſſuage in the County of Cheſter, to him and his Aſſigns for three Lives, died inteſtate without Children, leaving only Anne Pickering his Siſter: Adminiſtration was committed to Margaret Oldham the Plaintiff, whom the Defendant now ſues in the Spiritual Court of Cheſter for Diſtribution, and to exhibit an Inventory, which ſhe exhibited and omitted thereout the Eſtate pur auter vie, whereupon the ſingle Queſtion was this, Whether an Eſtate pur auter vie be not diſtributable in like Manner, as Inteſtates Goods and Chattels are, according to 22 & 23 Car. 2. by Force of 29 Car. 2. c. 3. which enacts for the Amendment of the Law, That an Eſtate pur auter vie ſhall be deviſeable, and if no ſuch Deviſe thereof be made, the ſame ſhall be chargeable in the Hands of the Heir, if it ſhall come to him by reaſon of a ſpecial Occupancy, as Aſſets by Diſcent; as in Caſe of Lands in Fee-ſimple; and in Caſe there be no ſpecial Occupant thereof, it ſhall go to the Executors or Adminiſtrators of the Party that had the Eſtate thereof by vertue of the Grant, and ſhall be Aſſets in their Hands.

And after a long Argument by Cheſhire for the Plaintiff, and by Ward for the Defendant, the whole Court, viz. Holt, Rokeby, Turton and Eyre, unanimouſly gave Judgment, That the Prohibition ſhould ſtand, and that an Eſtate pur auter vie belonging to an Inteſtate, was not diſtributable; for notwithſtanding this Alteration by the Statute, it remains a Freehold ſtill; and the Amendment of the Law in this Particular, was only deſigned for the Relief of Creditors; that if it came to the Heir by reaſon of a ſpecial Occupancy, it ſhould be in his Hands Aſſets by Diſcent, that is, liable to the Payment of thoſe Debts where the Heir is chargeable, and of thoſe only; but if there was no ſpecial Occupant, then it ſhould go to the Executors or Adminiſtrators, i. e. they ſhall be in the Room of the Occupant, and it ſhall be Aſſets in their Hands, i. e. they ſhall be bound to pay the Debts of the Deceaſed to the Value thereof; ſo that it is not ſo much

vid. Peer Williams's Rep. vol. 2d. fag. 381. contra.

much as Assets to pay Legacies, except such as are devised particularly thereout, the Statute making it Assets only for this particular Intent, to pay Creditors; and no Debts appearing in this Case, the Administrator is as it were the Occupant, and shall not be compelled to make any Distribution thereof, as he shall of Goods and Chattels, according to 22 & 23 Car. 2.

Offices and Officers.

Jones *versus* Pugh. Mich. 3 W. & M. B. R.

CASE for disturbing the Plaintiff in his Office of Vicar-general. A Special Verdict was found, viz. That the Bishop of Landaff granted the Office of Vicar-general to the Plaintiff and J. S. habend. conjunctim & divisim, exercend. per se vel sufficien. deputat'. It was objected, That a judicial Office could not be granted to two; for if they differ, nothing can be done: Answer, That may be said of four Judges, as in B. R. and in ministerial Offices, as two Sheriffs: The Court held the Grant good, and said, If an Office be granted to two, and one dies, the Office does not survive, but determines; as if two Sheriffs, and one dies, the other cannot act; otherwise if granted to two and the Survivor of them.

(1) Judicial Office may be granted to two; but if one dies, it shall not survive, unless said *To the Survivor.*

Dominus Rex *versus* Kemp. Trin. 7 Will. III. B. R.

A Scire Facias was brought to repeal Letters Patent, whereby King Charles the Second granted to the Defendant Kemp the Office of Searcher in the Port of Plimouth. The Case was, King Charles II. had granted this Office to A. durante beneplacito; and afterwards by other Letters Patent, reciting the first, granted it to B. for Life, to commence after the Death, Surrender, or Forfeiture of A. Afterwards B. surrendered to the King, who in consideration of the Surrender, granted the Office to the Defendant Kemp, to commence after the Death,

(2) King grants an Office to A. *durante beneplacito*, and afterwards grants the same to B. to commence after the Death, Surrender, or Forfeiture of A. the later Grant is good.

Death, Forfeiture, Surrender, or other Determination of the Estate of A.

It was objected, That the Patent and Grant to B. was void, because A.'s Estate, being at Will, could not be surrendered nor forfeited. Also an Estate of Freehold cannot depend upon an Estate at Will.

Office at Will is at the Will of the King and not of the Party, and may be surrendered.

Et per Cur'. An Estate at Will in Lands cannot be surrendered, because 'tis determinable by the Will of either Party; but such an Office at Will is not properly at the Will of both Parties, but at the Will of the King only; the Party cannot determine his Will, but by Surrender; for if it be an Office of Trust, a meer Forbearance to execute will be an Offence, and fineable; and Surrender is the constant Practice in such Cases. So did the Chief Justices Hale and Scroggs.

King's Tenant at Will may forfeit, and there must be an Inquisition.

2dly, It may be said forfeitable in some Measure, and the King's Tenants at Will may be said to forfeit; for in Case of Forfeiture, the King will be informed by Inquisition before he determine his Will, and then upon the Return of the Inquisition the Office is forfeited; but if it were an Estate for Life, there must be a Scire Facias to repeal the Letters Patent.

3dly, If the King had turned out A. the Grant to B. may take Effect, tho' not immediately, yet after the Death of A. and the King shall appoint another in the mean Time.

A Freehold to commence *in futuro*, may be in a Rent *de novo*, or in an Office.

4thly, That a Freehold of Lands cannot be granted to commence in futuro, or depend upon an Estate at Will; but a new Office, or a Rent de novo, may be created to commence in futuro, &c. for 'tis the Creature of him that makes it; and it is no otherwise in being than it is in Grant. And the King doth not grant a Reversion, but in Reversion; and that not in respect of a particular Estate, but because he is pleased to grant in futuro.

Culliford *versus* De Cardonell. Hill. 8 Will. III. B. R.

(3) Bond given by Deputy to Principal to pay him half the Profits of the Office, good.

IN Debt on an Obligation; on Oyer the Condition was, That whereas the Defendant was made Deputy to the Plaintiff in his Office, if he pay the Plaintiff half the Profits, then, &c. the Defendant pleaded the Stat. of 5 & 6 E. 6. Et per Cur'. This Bond is not within the Statute, because the Condition is not to pay him so much in Gross, but half the Profits, which must be sued for in the Principal's Name; for they belong to him, tho' out of them a Share is to be allowed to the Deputy for his Service.

Saunders *verſus* Owen. Trin. 10 Will III. B. R.

(4) *Cuſtos Rotulorum* may appoint the Clerk of the Peace without Deed.

IN an Aſſize of Novel Diſſeiſin for the Office of Clerk of the Peace of Kent, the Recognitors found a Special Verdict, viz. That the Earl of Winchelſea being Cuſtos Rotulorum of that County, made P. Owen Clerk of the Peace, to hold at his Pleaſure, by Writing under his Hand and Seal; and becauſe the Juſtices of Peace at Seſſions ſcrupled to admit him upon this Paper, the Lord Winchelſea came into Court, and ſaid, I nominate *P. Owen* to be Clerk of the Peace according to Act of Parliament.

And the Court held, That it always belonged to the Cuſtos Rotulorum to nominate the Clerk of the Peace, but the Clerk of the Peace was removeable when-ever the Cuſtos was removed or changed; and moreover was removeable at the Will of the Cuſtos till 32 H. 8. which makes him to continue in quouſque the Cuſtos ſhall continue in: Now by the late Act, he is to continue for Life; and tho' the Words be, Give and Grant to him; yet it is only an Appointment, and conſequently may be without Deed: That it cannot be a Grant from the Cuſtos, or enure as ſuch, is plain, becauſe the Cuſtos is only at Will; and he that has an Office at Will, cannot make a Grant for Life, becauſe there is no original Eſtate ſufficient to bear it; therefore this muſt enure as an Appointment, or the Execution of a Power given by the Statute; like a Power to an Executor to ſell, or a Tenant for Life to make Leaſes; the Conſequence of all which is, That this was a good Appointment, tho' without Deed; for whatever is to take Effect out of a Power or Authority, or by Way of Appointment, is good without Deed; otherwiſe where it takes an Effect out of an Intereſt, and is to enure as a Grant; for then, if it be of a Thing incorporeal, it muſt be by Deed. Held upon a Writ of Error of a Judgment in the Common Pleas.

Whatever is to take Effect out of an Authority, or by Way of Appointment, is good without Deed.

Anonymus. Mich. 11 Will. III. B. R.

(5)

SErjeant Darnell moved againſt the Clerk of the County-Court for granting a Replevin without taking a Bond or Surety of the Plaintiff to proſecute; but the Court made no Rule, becauſe it was a ſtale Cauſe of Complaint near two Years ago; beſides, 'twas only a ſingle Inſtance; but the Court ſaid, that when it grew into a Practice, as if a Sheriff conſtantly or frequently uſed to let Perſons at large without Bail, then it is an Abuſe of his Office, and the Court will interpoſe. Per Cur. Holt abſente Bring your Action.

Godolphin *verſus* Tudor. Mich. 3 Ann. B. R.

(6) Bond by Deputy to pay a certain Sum out of the Salary or Profits is good; but where it is without relation to the Salary or Profits, void.

SIR William Godolphin being Auditor of Wales made a Deputy quamdiu ſe bene geſſerit, who by Articles of Agreement between them, was to have the Fees, and in Conſideration thereof, to pay Sir William 200l. per Annum, and ſave him harmleſs. In Debt on the Bond for Perfomance, Judgment was given againſt the Plaintiff: 1ſt, The Court held this an Office within the Stat. 5 & 6 E. 6. c. 16.

2dly, The Court held, That where an Office is within the Statute, and the Salary is certain, if the Principal make a Deputation, reſerving a leſſer Sum out of the Salary, 'tis good: So if the Profits be uncertain, ariſing from Fees, if the Principal make a Deputation, reſerving a Sum certain out of the Fees and Profits of the Office, 'tis good; for in theſe Caſes the Deputy is not to pay, unleſs the Profits riſe to ſo much; and tho' a Deputy by his Conſtitution is in Place of his Principal, yet he has no Right to the Fees, they ſtill continue to be the Principal's; ſo that as to him, 'tis only reſerving a Part of his own, and giving away the reſt to another; but where the Reſervation or Agreement is not to pay out of the Profits, but to pay generally a certain Sum, it muſt be paid at all Events, and ſuch Bond is void by the Statute.

Lee *verſus* Drake. Trin. 4 Ann. B. R.

(7) Caſe, for diſturbing him in the Exerciſe of the Office of Pariſh-Clerk.

CASE, wherein the Plaintiff declared, Quod cum diu extitiſſet Clerk of ſuch a Pariſh, the Defendant diſturbed him in the Exerciſe of his Office, and hindered him to ſit in the Clerk's Seat, per quod he loſt the Profits of his Office. It was objected, That this was rather a Service or Imployment than an Office; that if it be an Office, it is Eccleſiaſtical, for of common Right the Parſon appoints the Clerk, and the Court will not intend a Cuſtom; and unleſs a Clerk comes in by the Election of the Pariſhioners according to Cuſtom, he has not a temporal Right; and the Court will not grant a Mandamus for a Clerk, without an Affidavit that he is appointed by the Pariſh. 2dly, It does not appear that any Fees appertain unto this Office, and no Action lies at Common Law for Diſturbance in the Enjoyment of a Seat in the Church, without a temporal Right, and ſo it is here. Adjournatur.

Office for the King.

Layton *contra* Manlove. Mich. 2 W. & M. In Canc.

SEVERAL voluntary Eſcapes being committed by Manlove the Warden of the Fleet, an Inquiſition was found, and the King granted the ſaid Office to Layton; and now the Commiſſioners of the Great Seal refuſed to ſeal the ſame, being of Opinion that the Inquiſition was void, and ought to be quaſhed, becauſe it does not find what Eſtate Manlove had in the Office; for there are two ſorts of Inquiſitions, the one to inform, and that need not be ſo certain, Mo. 308. the other to veſt and entitle the King to grant, and that muſt be certain. Jones 71, 77. 3 Cro. 895. And here no certain Eſtate is found to veſt, and a Melius inquirendum cannot ſupply this Defect; for where an Inquiſition is defective and uncertain, that cannot be ſupplied by Melius Inquirendum; but where it finds ſome Points and not others, and that which is found, is well found, there may be a Melius Inquirendum. Per Holt C. J. Pollexfen C. J. and Nevil J.

(1) Inquiſition finding ſome Points well, and nothing as to others, may be ſupplied by *Melius Inquirendum*; otherwiſe if defective in the Points found.

Linch *verſus* Coote. Hill. 8 Will. III. B. R.

TENANT for Life, Remainder to his firſt Son in Tail, Remainder to J. S. in Fee: Tenant for Life is attainted of High Treaſon, and dies without Iſſue. It was objected, That the whole Eſtate being veſted in the King by 33 H. 8. without any Office finding the Special Matter, he in Remainder cannot enter, for the Statute veſts it in the King like a general Office; and if a general Office had been found, it would have been ſuppoſed a Fee. Holt C. J. No other Eſtate veſts in the King by vertue of the Act of Parliament, than the Party attainted had; juſt as if a ſpecial Office had been found: And therefore in this Caſe, as in that, the Remainder-Man may enter on the King, his Eſtate being determined, for the Statute ſaves the Rights of others; otherwiſe where an Office finds an Eſtate in Fee in the Party attainted; for then it muſt be avoided by Traverſe or Amoveas manum. Vide Dyer 335. b. Hob. Sheffeild and Ratcliffe, Moor 109. 3 Cro. 640. Dy. 354. pl. 230.

(2) A. Tenant for Life, Remainder to *B.* in Fee; A. is attainted, King ſeiſes. B. may enter on the King; otherwiſe if an Office had found A ſeiſed in Fee.

Orders of Juſtices of the Peace.

[*Vide* Titles, *Apprentices*, *Baſtards*, *Juſtices of the Peace*, *Poor*, *Seſſions*.]

Inter Inhabitan' Dumbleton *and* Beckford. Paſ. 7 Will. III. B. R.

(1) Order to remove to B. becauſe Father laſt ſettled there, ill.

ON a Certiorari was returned an Order of Seſſions in Gloceſterſhire. A Girl of near thirteen Years old had been at Dumbleton in the ſaid County, and had always lived there with her Grandmother; her Father was legally ſettled at Beckford in the ſame County: She wanting Relief, was by the Order charged on Beckford, becauſe her Father was ſettled there. Et per Cur'. The Order muſt be quaſhed; for tho' till eight Years Children are counted Nurſe-children, yet they muſt afterwards have Maintenance from the Pariſhes where they themſelves are ſettled, and for any Thing appears ſhe may have gained a Settlement.

Anonymus. Mich. 7 Will. III. B. R.

(2) In Orders to diſcharge Apprentice, the very Diſcharge under Seal need not be returned.

IF an Apprentice be diſcharged from his Maſter, the Statute requires that the Diſcharge be under the Hands and Seals of four Juſtices of Peace; but in a Certiorari to remove the Order, 'tis ſufficient in the Return to take Notice of the Order ſo made; for 'tis not neceſſary to certify the Diſcharge it ſelf.

Dominus Rex *verſus* Randall.

(3) Seſſions cannot ſuppreſs an Alehouſe licenced, unleſs for Diſorder.

BY a Certiorari two Orders were removed from the Seſſions of Middleſex; the 1ſt whereof recited, That whereas R. Randall had lately taken a Houſe at Hoxton, deſigning to ſell Ale and Beer there; and whereas the Houſe had never been inhabited but by Merchants and Men of Quality, and there were Alehouſes enough in Hoxton already, therefore 'tis ordered that

no Licence be granted to any Houſe in Hoxton wherein Ale was not formerly ſold, and that no Licence ſhould be granted to Randall: The ſecond Order recited, That whereas a Licence was ſurreptitiouſly gotten by Randall from two Juſtices of Peace, that yet his Houſe ſhould be ſuppreſſed from drawing of Ale: And it was moved to quaſh theſe two Orders, becauſe by 5 & 6 E. 6. c. 25. the Quarter-Seſſions cannot controul two Juſtices of Peace in this Affair. Per Holt C. J. This difference has been taken: If Authority be given to two Juſtices of Peace to do an Act, and from that Act there is no Appeal, then it may commence at the Seſſions; but if an Appeal be given, then they cannot begin at the Seſſions, as 43 Eliz. and 18 Eliz. till 3 Car. 2. But the true Obſection here is, That except for Diſorder the Juſtices of Peace cannot at their Seſſions, ſuppreſs an Alehouſe licenced by two Juſtices of Peace; and the Order was quaſhed.

Dominus Rex *verſus* Gately. Mich. 7 Will III. B. R.

ON a Certiorari it was moved to quaſh an Order of Seſſions for the Diſcharge of one Edward Green from his Apprentice-ſhip to the Defendant Gately; the Fact was, That Gately was a Mountebank, and being at a Place in Yorkſhire, where he kept a publick Stage, Green was by Indenture bound Apprentice to him in this Manner, viz. to Robert Gately, Surgeon, to learn the Trade he now uſeth; and immediately he went upon the Stage, and ever ſince continued in the Imploy; after which, being with his Maſter Gately in Middleſex, he complained to the Juſtices that his Maſter did not teach him the Trade, upon which they diſcharged him; this being done, Green ſet up the Trade of Mountebank himſelf; Mr. Northy moved to quaſh the Order, the Juſtices being willing, becauſe they were impoſed upon: 1ſt, He excepted to the Form of the Order, that they ordered the Servant to be diſcharged from his Maſter, whereas the Diſcharge ſhould be mutual. 2dly, Becauſe the Stat. 5 Eliz. in diſcharging Apprentices is confined, and extends only to Apprentices mentioned in that Clauſe, and there neither Surgeon nor Mountebank is mentioned: And tho' a Surgeon may be a Trade within the Statute, which a Man cannot exerciſe without ſerving an Apprenticeſhip to, becauſe that Clauſe of the Statute is general; yet this part of the Statute relating to the Diſcharge of Apprentices, extends only to Trades there mentioned. Per Cur'. As to the firſt, the Diſcharge of the Servant is by Conſequence a Diſcharge of the Maſter; and as to the ſecond, The Clauſe of the Statute relating to the Diſcharge of Apprentices, is general, and goes to all manner of Apprentices, even to thoſe of Merchants, as it was adjudged in Hawkſworth's and Hillary's Caſe, 1 Saund. 314. But afterwards the Court was of Opinion, that the

(4) Power to diſcharge Apprentices, extends only to ſuch Trades as are ſpecially named in the Statute.

the Power of diſcharging reaches only to the Trades mentioned in the Statute, among which a Surgeon is not mentioned; for that tho' as to the ſerving ſeven Years Apprenticeſhip, a Surgeon comes under the general Terms of Arts and Myſteries; yet the Power of diſcharging reaches only to the Trades particularly mentioned, and this Point was not ſtirred in Hillary's Caſe; and in Watkins's Caſe 2 Keb. 822. Hale C. J. was of another Opinion.

Inter Inhabitan' Paroch' Oſwell *and* Woking. Paſ. 8 Will. III. B. R.

(5) Seſſions may affirm or quaſh, but not ſuperſede an original Order.

AN Order was made upon Appeal, ſetting forth, That by the Order of two Juſtices, upon a Controverſy before them between the Pariſhes of Woking and Oſwell, a poor Perſon was removed to Oſwell, and that upon Complaint of the Church-wardens of Oſwell, the Seſſions ordered their Order to be ſuperſeded, and that the Perſon ſhould be removed to Waking aforeſaid; and it was objected, That the Act of Parliament only gives the Seſſions Power to affirm or quaſh, but not to ſuperſede an Order, or to ſuſpend it for a Time; and that the Caſe before them being for the Pariſh of Woking, an Order made by them for another Pariſh not concerned, viz. the Pariſh of Waking, muſt be void, and that the Word aforeſaid would not help it, becauſe Oſwell was the Pariſh laſt mentioned. Per Cur'. Superſeding is not a proper Word, for there is a Difference between a Superſedeas and a Repeal: A Commiſſion of Oyer and Terminer that is ſuperſeded, may be revived by Procedendo, without granting a new Commiſſion, but that cannot be in the Caſe of a Repeal, tho' this Word is commonly uſed by Juſtices of Peace upon ſuch Occaſions; and then there is a plain Difference between Waking and Woking, for by what appears they may be two diſtinct Pariſhes: But no Judgment was given, for the Cauſe was referred to a Judge of Aſſize.

Inter *the Inhabitants of the Pariſhes of St.* Nicholas *and St.* Helen. Trin. 8 Will. III. B. R.

(6) Where Notice ſhall be preſumed.

TWO Orders were made for ſettling one Rice, a poor Man, the firſt by two Juſtices, the other by the Seſſions on Appeal, confirming the former; the Fact was, Rice being ſix Years ago legally ſettled at St. Nicholas, clandeſtinely came into the Pariſh of St. Helen, and lived there without giving Notice to the Officers of the Pariſh of St. Helen during all that Time; they ſent him back to the Pariſh of St. Nicholas, &c. And the Queſtion was, Whether living in St. Helen's ſo long as ſix

Years, ſhould not induce the Court to preſume Notice and other Things requiſite well done to gain a Settlement? Et per Cur'. No Perſon, that is not a removeable Perſon, is to give Notice; as he that rents a Tenement of 10 l. per Annum, a Servant, &c. need not give Notice, becauſe they cannot be diſturbed: In this Caſe, if it had appeared upon the Order, That the Pariſh of St. Helen had taken Notice of him, and looked upon him as one of the Pariſh, as by relieving him, making him an Officer, &c. there after ſo long a Time, we would have preſumed Notice given, becauſe the Notice need not be exactly proved; for the Church-warden to whom it was given, and the Witneſſes atteſting the Matter may be dead; but here 'tis returned on the Order, that he clandeſtinely removed himſelf, ſo that he might eaſily continue in the ſame Manner; wherefore in ſuch Caſes we muſt conſtrue the Statute ſtrictly; and therefore the Order was confirmed.

Inter Paroch' Trobridge *and* Weſton. Mich. 8 Will. III. B. R.

(7) *Informed* that B. is the Place of legal Settlement, ill.

IT was moved to quaſh an Order of two Juſtices, which recited, Whereas B. is, as we are credibly informed, the Place of his laſt legal Settlement, not averring, that it was the Place of his laſt legal Settlement, as it ought; for that the Statute ſays, the poor Perſon ſhall be removed to the Place where he was laſt legally ſettled; and it was quaſhed.

Note, Mich. 3 Ann. B. R. it was held, That legal Settlement, and laſt legal Settlement are the ſame Thing, becauſe by every new Settlement the Precedent is diſcharged.

Anonymus. Mich. 8 Will. III. B. R.

(8) Removing need not be by Juſtices of the Diviſion.

AN Order was made by two Juſtices to remove a poor Perſon, and Exception was taken, That it did not appear by the Order, that the Juſtices were of the Diviſion, or that either of them was of the Quorum: The laſt was held a good Exception, but the firſt over-ruled, for in that the Statute is only directory.

Inter Inhabitan' Chittinſton *and* Penhurſt. Mich. 8 Will. III. B. R.

(9)

AN Order for Removal of a poor Perſon was quaſhed, becauſe it was not ſaid that one of the Juſtices was of the Quorum; Holt C. J. ſaid, This had been doubted, and perhaps ad-

adjudged otherwiſe before; but that he was of a different Opinion; for this being a ſpecial Authority, it muſt appear to be purſued.

Dominus Rex *verſus* Dobbyn.

(10) Juſtices reſiding in the County, not enough.

AN Order of two Juſtices was quaſhed, becauſe it did not appear they were Juſtices of the County, or for the County, but only reſiding in the County.

Dominus Rex *verſus* Turnock. Mich. 8 Will. III. B. R.

(11) Orders made upon 43 *El.* c 2. muſt be at the Quarter-Seſſions.

INDICTMENT for refuſing to relieve and maintain Eliz. the Wife of his Son John Turnock, according to an Order made in the Seſſions, which Order was ſet forth in the Indictment in hæc verba, viz. Ad generalem Seſſion' Pacis tent. apud Marlb. in & pro Com. Wilts, &c. and at the Motion of Mr. Eyre, the Indictment was quaſhed; becauſe the Order was only ſaid to be made at the general Seſſions, and not at the general Quarter-Seſſions, for the Quarter-Seſſions are appointed by 2 H. 7. c. 4. tho' it appears by the ſame Statute, that there may be a general Seſſions at other Times, and 43 Eliz. c. 2. ſ. 7. appoints Orders in theſe Caſes to be made at the general Quarter-Seſſions.

Inter Inhabitan' *of* Much-Waltham *and* Peram *in* Eſſex. Mich. 8 Will. III. B. R.

(12) Baſtard born pending an illegal Order of Removal from A. is ſettled in A.

MR. Comyns moved to quaſh an Order of Seſſions for the Settlement of a Baſtard-Child of E. L. She being big with Child, a little before her Delivery, was removed by the Order of two Juſtices of Peace, from Much-Waltham to Peram; before the next Seſſions ſhe was delivered at Peram of a Baſtard-Child: At the Seſſions Peram appealed, and the Juſtices adjudged the Woman to be laſt legally ſettled at Much-Waltham, and ordered her to be ſent back thither; after which an Order was made for ſettling the Child at Peram, which Comyns moved to quaſh, becauſe, tho' regularly Baſtards muſt be maintained where born; yet in this Caſe, where there ſeems to be a Contrivance, it ſhall not be ſo, as in Tuming's Caſe, 2 Bul. 349. Whenſoever an Order is reverſed, all Things happening ſubſequent thereunto, ſhall be avoided thereby: This Child, being born pending the Order, ſhall be eſteemed in Law to be born in that Pariſh, whereunto the Mother on the Appeal is returned back; the Court ſeemed to agree this, and a Rule was made to ſhew Cauſe, but none was ſhewed.

The Caſe of the Pariſh of Amner. Mich. 8 Will. III. B. R.

(13) Seſſions on Appeal cannot ſend to a third Place, not Party.

THE Caſe was, At the Complaint of the Church-wardens of Terrent-Keinſton in Dorſetſhire, to Sir John Morton and John Gould, two Juſtices of the Peace of the ſaid County, concerning a poor Man and his Wife; they the ſaid Juſtices adjudged him to be laſt legally ſettled at Tirrin-Crawford, upon which they appealed; and there it was ordered, That it appearing to the Seſſions that he was laſt ſettled at Amner, therefore they diſcharge Tirrin-Crawford, and order the poor Man to be removed to Amner: This was quaſhed upon the Motion of Mr. Serjeant Gould, becauſe this was to make an original Order, which the Juſtices at Seſſions have no Power to do; they might have reverſed the firſt Order, and ordered the Party to be carried back to Terrent-Keinſton, but they could not remove the Party to Amner, a third Pariſh, who was no Ways concerned in the Order or Appeal; and if they are really chargeable with it, it muſt be at the Complaint of Terrent-Keinſton to two Juſtices of the Peace.

Inter *the Inhabitants of the Pariſh of* Chittinſton *and* Penhurſt. Mich. 8 Will. III. B. R.

(14) Authority given to Juſtices of the Peace muſt be exactly purſued.

AN Order was made to remove a poor Perſon from Chittinſton to Penhurſt, and this was quaſhed, becauſe 'twas not ſaid that one of the Juſtices was of the Quorum: Holt C. J. ſaid, That ſome indeed had been of Opinion that an Order was good, notwithſtanding this Omiſſion, and perhaps it has been ſo adjudged; but he was of Opinion, That this being a ſpecial Authority to Juſtices out of Seſſions, it ought to appear that that Authority was exactly purſued.

Dominus Rex *verſus* Matthews. Hill. 8 Will. III. B. R.

(15) Upon Motion to quaſh an Order of Baſtardy, the reputed Father muſt be preſent in Court.

MR. Mountague moved to quaſh an Order for maintaining a Baſtard-Child: 1ſt, Becauſe 'twas not ſaid the Child was likely to become chargeable: And 2dly, The Defendant was ordered to pay 18 d. per Week indefinitely, without limiting any certain Time: Shower anſwered, That no Order relating to a Baſtard-Child can be quaſhed, except the reputed Father be preſent in Court, quod Curia conceſſit; however this being a hard Caſe, a Rule was made to ſhew Cauſe; and being ſtirred again the next Term, the Court would not quaſh it, till the reputed Father came into Court; and the firſt Exception was

over-ruled; for 'tis ſelf-evident, That every Baſtard-Child is likely to become chargeable.

Purnall's *Caſe*. Hill. 8 Will. III. B. R.

(16) AN Order upon H. for maintaining his Daughter, was quaſhed; becauſe it was recited to be made ad Generalem Seſſionem Pacis, and not ad Quarterialem Seſſionem Pacis, according to the Statute 43 Eliz. c. 2.

Inter *the Inhabitants of* Talbury *and the Hamlet of* Foſton *in* Scropton. Hill. 8 Will. III. B. R.

(17) Nothing will amount to Notice in writing to make a Settlement that is not ſpecified in 3 & 4 *W. & M. c.* 11.

AN Order was made by two Juſtices of the Peace in Derbyſhire, to remove Robert Floud to Foſton in the Pariſh of Scropton. Upon Appeal the firſt Order was quaſhed, and the Party ordered to be removed to Talbury, and the Matter of Fact being now ſtated ſpecially to the Court; the Caſe was,

Floud was born in Talbury, and ſerved ſeven Years Apprenticeſhip there, which ended in the Year 1693: Since 1693, he lived in Foſton and other Places out of the Pariſh of Talbury, and the Blackſmith that lived at Foſton dying, and the Inhabitants wanting one, in 1694 Floud went thither and rented the Shop and a Chamber of the Widow of the former Blackſmith for a Year, at 52 l. per Annum, with the Conſent of the Bailiff of the Lord of the Manor: Here he worked publickly, was publickly imployed by the Pariſhioners, and particularly by the Bailiff of the Lord of the Manor, the Vicar, and the Juſtice of Peace; and now having never given Notice, nor rented a Tenement of 10 l. per Annum, or exerciſed any Office; the Queſtion was, Whether this publick Way of living was not tantamount and equivalent to Notice in writing, which was only deſigned to prevent clandeſtine Entries and Livings. Et per Cur'. This publick Notice taken by the Pariſh, might perhaps have ſatisfied the Stat. 1 Jac. 2. but there being Doubts concerning the Notice preſcribed by that Act, the 3d and 4th W. & M. c. 11. was made to explain it, and this later Statute hath particularized the Notice, and what ſhall be tantamount to it, and what not; but this is not among the Particulars of the Statute, for which reaſon the Order was confirmed.

Hatton's *Caſe*. Hill. 8 Will III. B. R.

(18) Order of Baſtardy under the Hands of more than two Juſtices, well.

AN Order was made by five Juſtices to maintain a Baſtard-Child; and it was objected by Broderick, That the Complaint is not ſaid to be by any Pariſh or Officers there, but only of a Town which may include ſeveral Pariſhes; but the Court held that well enough. 2dly, That the Order is under the Hands of five Juſtices, whereas it ſhould be only the two next; but the Court held that well, for the Statute is not reſtrictive to two, but there muſt be two at leaſt. 3dly, That it does not appear that either of thoſe was a Juſtice of Quorum; upon this it was quaſhed, but the Party was bound to appear at the next Seſſions.

Inter Inhabitan' Cockfield *and* Boxſtead. Hill. 8 Will. III. B. R.

(19)

ANNE TALBY was by Order removed from Cockfield to Boxſtead; and this Order being appealed from, was confirmed at the Seſſions; but the Seſſions after that made an Order of Review, and quaſhed the former Order of Seſſions, becauſe made by Surpriſe. Et per Cur'. The Order of Review muſt be quaſhed; for the Juſtices have no Power after the firſt Seſſions.

Dominus Rex *verſus* Harding. 8 Will. III. B. R.

(20) Seſſions cannot refer a Matter to be determined by another.

A Certiorari was directed to the Lord Mayor and Juſtices of Peace of London, to remove an Order; before Filing whereof a Procedendo was prayed: The Fact was, the Servant of one Harding complained to the Seſſions, that her Maſter was in arrear to her for Wages: On hearing the Matter, both Parties agreed to refer it to Sir Thomas Lane, late Lord Mayor, to be determined; which was done accordingly by Order of Seſſions: He made an Award or Order, but before Report made thereof, this Certiorari was now brought, whereon a Procedendo was now prayed. Et per Cur'. A Judge of Niſi Prius, by Conſent of Parties, may make a Rule to refer a Cauſe, but the Seſſions cannot do ſo, tho' by Conſent: They may refer a Thing to another to examine, and make report to them for their Determination, but cannot refer a Thing to be determined by the other: And therefore the Certiorari was filed and no Procedendo granted.

Inter *the Inhabitants of the Pariſh of St.* Mary le More *and* Heavy-Tree *in* Devonſhire.

(21) Settlement by Payment of Pariſh-Rates.

FACY was ſettled at Heavy-Tree, and afterwards went into the Pariſh of St. Mary le More in Exeter, and took a Houſe there of one Pound per Annum, wherein he lived a Year and a half, and paid the Rates and Taxes due for the ſaid Houſe; and the Juſtices at Seſſions held, That the Rate for a Houſe, without a Rate on his Perſon, was not ſufficient to make a Settlement; but the Court of King's Bench quaſhed this Order for this Cauſe, and held him ſettled at St. Mary le More.

Dominus Rex *verſus* Beard.

(22) Order of Baſtardy ill, becauſe Examination by one Juſtice only.

AN Order made by two Juſtices of the Peace in Suſſex, adjudged Beard to be the Father of a Baſtard-Child, which was quaſhed, becauſe it appeared thereby, that the Examination of the Woman was by one Juſtice only, tho' the ordering Part thereof was ſaid to be made by both; and Beard was bound over to the next Seſſions.

Inter Inhabitan' *St.* Giles's Cripplegate *and* Hackney. Paſ. 9 Will. III. B. R.

(23) Place of laſt legal Settlement muſt be adjudged.

WHEREAS Complaint has been made to us, that Elizabeth Fulford, Wife of Uriel Fulford, is lately come into the Pariſh of St. Giles's Cripplegate, and is likely to become chargeable to the ſame; and whereas on Oath made by the ſaid Eliz. Fulford, it appears that her Husband was laſt legally ſettled at Hackney; theſe are therefore, &c. Quaſhed, becauſe there is no Judgment of the Juſtices concerning the laſt legal Settlement, but only the Oath of the Woman.

Dominus Rex *verſus* Barebaker. Paſ. 9 Will III. B. R.

(24) To maintain his Baſtard till the Age of fourteen, ill.

ORDER upon H. adjudging him to be the Father of a Baſtard-Child, and ordering him to pay 3 s. per Week till the Child attain the Age of fourteen Years, was held naught; for they have no Authority but to indemnify the Pariſh, by obliging him to maintain the Child as long as it ſhall be chargeable to the Pariſh.

Anonymus. Paſ. 9 Will. III. B. R.

AN Order made by two Juſtices of the Peace for ſettling a poor Perſon, was quaſhed by the Seſſions; but becauſe it did not appear that it came before them by Way of Appeal, without which they have no Juriſdiction, this Order of Seſſions was quaſhed. (25) Where the Seſſions quaſh an Order, it muſt appear to be on Appeal.

Inter *the Inhabitants of* Berry *and* Arundel. Paſ. 9 Will. III. B. R.

WHEREAS Complaint hath been made to us, That Jacob Duckin with his Wife and Children, came from his Place of Abode and laſt legal Settlement in Berry to Arundel: We therefore require you, &c. Naught, for there is no Adjudication of the Juſtices, which was his laſt legal Settlement, but only a Complaint, that Berry was, which doth not appear, whether true or falſe. (26) Want of Adjudication of laſt legal Settlement.

Elizabeth Aſhley's *Caſe.* Trin. 9 Will. III. B. R.

TWO Orders were removed by Certiorari, but the Return was quaſhed; becauſe the Return in the Schedule annexed to the Writ was not made by two Juſtices, but by the Clerk of the Peace, who was not the Perſon to whom the Certiorari was directed, and thereupon a new Certiorari was granted. (27) Return by the Clerk of the Peace, ill.

The Caſe of Cheſterfield. Trin. 9 Will. III. B. R.

JERRISON was a Servant to Sir Paul Jenkinſon in Waltham; afterwards he left his Service and was put out by his Maſter Sir Paul Jenkinſon, to a Barber in Cheſterfield, who was to teach him to ſhave and make Perriwigs, for which he was to have 5l. from Sir Paul: Jerriſon continued a Year in this Imployment, according to Covenants between Sir Paul and the Barber, to which Jerriſon was no Party; and the Court adjudged that this did not make a Settlement at Cheſterfield, becauſe it was no Service; and that the ſaid Jerriſon was thereby no more than a Boarder there for his Education, which is no Service to make a Settlement. (28) Covenant between the Maſter and a third Perſon, the Servant not being Party, makes no Apprenticeſhip.

Do-

Dominus Rex *verſus* Brown. Trin. 9 Will. III. B. R.

(29) Appeal from Order of Baſtardy muſt be to the firſt Seſſions after Notice to the Father, of the firſt Order.

AN Order was made, adjudging Brown to be the Father of a Baſtard-Child, May 2, 1696. And in the Michaelmas Seſſions following, the ſaid Order was diſcharged: Now both Orders being here, the later was quaſhed, becauſe it did appear thereupon, that Michaelmas Seſſions was the firſt Seſſions after Notice given to the reputed Father, of his being ſo adjudged; for tho' 18 Eliz. appoints the Appeal not to be to the firſt Seſſions after the Order of the two Juſtices, but the firſt Seſſions after the Party hath Notice of the ſaid Order; yet by the Statute of H. 5. there might be a Seſſions intervening, as in this Caſe, between the Order by the two Juſtices and the Order of Seſſions; and it muſt appear on the Order, that this was the firſt Seſſions after Notice had of the former Order: After which the firſt Order by the two Juſtices was quaſhed, becauſe there was an Adjudication therein, that the reputed Father ſhould pay a certain Sum weekly, till the Child be of ſeven Years of Age, whereas they cannot charge the Father for any certain determinate Time, but as long as the Child ſhall be chargeable to the Pariſh.

Elizabeth Aſhley's *Caſe*. Trin. 9 Will. III. B. R.

(30) Juſtices need not be ſaid to be of the Diviſion.

EXCEPTION was taken to an Order of two Juſtices, to remove, &c. becauſe it was not ſaid that the two Juſtices were of the Diviſion, according to 13 & 14 Car. 2. Sed non allocatur; For the Court held the Statute as to this to be only directory and not reſtrictive or qualificatory, as that of the Quorum is.

Inter *the Inhabitants of* Dimchurch *and* Eaſtchurch. Hill. 9 Will. III. B R.

(31) Order for making one Pariſh contributory to the Poor of another.

AN Order was made at the Quarter-Seſſions originally, ſetting forth, That whereas the Pariſh of Dimchurch was overburdened with Poor, and the Pariſh of Eaſtchurch had no Poor, the Pariſh of Dimchurch ſhould be annexed to the Pariſh of Eaſtchurch, and that the Occupiers of Lands there ſhould contribute 20 l. per Annum, by equal monthly Payments to Dimchurch, as long as that was over-burdened with Poor, and Eaſtchurch had none: And it was objected by Mr. Brewer, That the Juſtices of Peace cannot alter Pariſhes and annex one to another. 2dly, That the Seſſions cannot make an original Order.

Per Holt C. J. There are two Ways by 43 Eliz. to make one Pariſh contributory to the Poor of another Pariſh, viz. either the Juſtices may tax particular Perſons in aid to that Pariſh which cannot relieve its own Poor; or they may aſſeſs the whole Pariſh in a certain Sum, and leave it to the Church-wardens and Overſeers to levy the ſame, or particular Perſons, which was well done in this particular Caſe; but ſo much of it as concerns the annexing of the Pariſhes, is void, and the reſt good. But the Court took Time to adviſe.

Inter Inhabitan' Paroch' Downhead *and* Broadchalk *in* Wilts. Hill. 9 Will. III. B. R.

(32) After Order confirmed on Appeal, if the Perſon goes to a Pariſh not Party, he muſt be removed by original Order.

TWO Juſtices of the Peace made an Order to remove John Raynsford, his Wife and three Children, from Rowborough in Somerſetſhire, to Broadchalk in Wilts, which Order, on an Appeal to the Quarter-Seſſions, was confirmed; after this Raynsford, with his Wife and three Children, came into the Pariſh of Downhead; whereupon two Juſtices, reciting the former Order and Confirmation, ordered him to Broadchalk; and now it was objected to this Order, That it did not appear that one of the Juſtices was of the Quorum. Mr. Northy on the other Side argued, it was not neceſſary here, becauſe it was not an original Order, but an Order made in purſuance of an Order of Seſſions. Et per Cur'. A Settlement by Order upon Appeal, binds all Parties: If the poor Man goes to the Pariſh from whence he is removed, the Seſſions muſt ſee their Order obeyed; but if he goes to another Pariſh not concerned in the Appeal, then it is proper for two Juſtices of the Peace to remove him to the Pariſh, where he was ſettled by the Seſſions by original Order; but then it muſt appear therein that one of them was of the Quorum. Quaſhed.

Inter Inhabitan' King's Norton *in* Wigorn. *and* Swolhill *in* Warwic. Hill. 9 Will. III. B. R.

(33) Order of two Juſtices binds againſt all Pariſhes, till repealed.

AN Order was made to remove a poor Woman from Yarly in Worceſterſhire, to Swolhill in Warwickſhire; afterwards two Juſtices in Warwickſhire, made an Order to remove her to King's Norton in Worceſterſhire, whereupon two Juſtices of Worceſterſhire ſent her back to Swolhill; and upon an Appeal to the Seſſions in Warwickſhire, the Juſtices confirmed her Settlement at King's Norton, and then an Order was made by two Juſtices of the Peace to execute the ſaid Order: All theſe Orders being brought up by Certiorari, Carthew moved to quaſh all except the firſt, all the others being made coram non judice; for when an original Order

der is made, it binds all Perſons until it be ſet aſide, and it cannot be ſet aſide but on Appeal to the Seſſions. Mr. Northy on the other hand inſiſted, That tho' in this Caſe two Juſtices could not ſend the Woman back again to Yarley, yet they might ſend her to a third Place, as King's Norton is in this Caſe; ſo that as to King's Norton 'tis but an original Order; but the Court ſeemed to be of another Opinion, for then King's Norton might ſend to Yarley, and there would be a perpetual Circuity; but ſeeing in this Caſe King's Norton had appeared at the Seſſions, and had been concluded there, they would not quaſh the Order, and ſeveral other Queſtions ariſing, all was referred to a Judge of Aſſize.

Dominus Rex *verſus* Shaw. Trin. 10 Will III. B. R.

(34) Appeal from Order of Baſtardy, muſt be to the General-Seſſions.

AN Order was made by two Juſtices of the Peace, adjudging Shaw to be the reputed Father of a Baſtard; whereupon he appealed to the next Quarter-Seſſions of the Peace, after Notice, where the Order of the two Juſtices was diſcharged; and now it was here moved to quaſh the Order of Seſſions, becauſe by the Statute the Appeal muſt be to the next General-Seſſions, and there might have been a General-Seſſions before the general Quarter-Seſſions, as in London and Middleſex, where there are four General-Seſſions in a Year, beſides the general Quarter-Seſſions. Quaſhed for this Fault.

Anonymus. Mich. 10 Will. III. B. R.

(35) Order to remove A. and his Family, ill for generality.

AN Order made to remove three Men and their Families, was quaſhed, quia too general; for ſome of their Family might not be removeable. If a Man ſettled at A. marries a poor Woman who is ſettled at B. and has Children by a former Husband; his Wife ſhall be removed with him to A. but her Children, ſuch of them as are above ſeven Years old, ſhall not be removed; thoſe under ſhall be removed, but that only for Nurture; for they ſhall be kept at the Charge of the other Pariſh: But ſuch a general Order ſweeps all away.

Anonymus. Mich. 10 Will. III. B. R.

(36) Firſt Order failing, all ſubſequent fall to the Ground.

PER Northy, it was ſettled in the Caſe of Wootton Baſſet, that if the firſt Order be naught, no ſubſequent Order on an Appeal can make it good. Hill. 11 Will. 3. B. R. Same Rule was taken by Holt C. J. and both Orders quaſhed; and Trin. 2 Ann. the ſame Reſolution between Selon and Ripley.

The Caſe of the Pariſh of St. Leonard Shoreditch. Mich. 10 Will. III. B. R.

(37) On Appeal from a Poors Rate, the Seſſions may quaſh the whole, and make, or order Church-wardens, &c. to make a new Rate.

THE Church-wardens, &c. made a Rate for Relief of the Poor, which was confirmed by two Juſtices, and therein nothing was taxed for the perſonal Eſtate, but all upon the real, which was erroneous: Several Inhabitants appealed to the Seſſions, and the Rate was there quaſh'd; and the Church-wardens, &c. ordered to make a new Rate upon both real and perſonal Eſtates: In the new Rate there was ſtill a great Inequality, the real Eſtate being taxed ten Times more, in Proportion, than the perſonal Eſtate; for this Reaſon ſeveral Inhabitants appealed again, and this Rate was likewiſe vacated by Order of the Seſſions. And now Northy and Shower moved to quaſh theſe Orders, urging, That the Seſſions could only relieve particular Perſons over-rated or grieved, but could not ſet aſide whole Rates at once. Sed per tot. Cur. viz. Holt, Rokeby and Turton. Surely the Juſtices at Seſſions, upon an Appeal by particular Perſons grieved, may, if they ſee Cauſe, ſet aſide the Rate; for the Act is, that if any Perſon or Perſons find themſelves aggrieved, it ſhall be lawful for the Juſtices at the Quarter-Seſſions to take ſuch Order therein, as by them ſhall be thought convenient, 43 Eliz. c. 2. ſect. 6. And in either of theſe Caſes of the firſt or ſecond Rate, the Juſtices could not have given Relief without ſetting aſide the whole Rate, becauſe the Rule was burthenſome to a whole Set of Men; and they may make a new Rate themſelves, or order the Church-wardens and Overſeers to make a new Rate, as was done in this Caſe; they having it in their Diſcretion to make a new Rate at Seſſions, or remand it to the Church-wardens, &c. to make one. The Orders were confirmed.

If Seſſions ſet aſide a whole Rate, they may make a new One;

Or refer it back to the Church-wardens, &c.

Dominus Rex *verſus* Albertſon. Mich. 10 Will. III. B. R.

(38) Child born of a Feme Covert, the Husband being at Sea, at and from the Time of Begetting to the Birth, is a Baſtard; but that muſt appear in the Order.

AN Order was made, reciting, Whereas it appears to us two Juſtices of the Peace, That Mary Spencer, Wife of Jonathan Spencer, Mariner, was on the 20th of March, 1695. delivered of a Male Baſtard-Child, which is likely to be chargeable, &c. And whereas it appears to us, that the ſaid Jonathan Spencer was imployed on Board the Ship called the Pembroke, in his Majeſty's Service, at Cales, and was not within the King's Dominions when the ſaid Child was begotten, or born; and whereas it appears that Albertſon had carnal Knowledge of the Body of the ſaid Woman, during the Abſence of her Husband, and that he begat the ſaid Child; we therefore adjudge him to be

the reputed Father, and to pay weekly, &c. And the said Order being confirmed upon Appeal, was brought here by Certiorari; and now Shower and Upton moved to quash these Orders, because 18 Eliz. c. 3. gives the Justices Power only to meddle with Bastards born out of lawful Matrimony; so that tho' this Child should be a Bastard, yet the Justices cannot meddle with it, because he is born in lawful Matrimony: But it does not appear in this Order, that this Child was a Bastard; for 'tis only said, the Father was absent when the Child was begotten, or born, in the Disjunctive; also it doth not appear, but the Husband was in England during the Time intermediate between the Begetting and Birth. Per Cur'. He is a Bastard who is born of a Man's Wife, while the Husband, at and from the Time of the Begetting to the Birth, is extra quatuor Maria: In Case of a real Action by him, the Tenant may plead general Bastardy; and on a Writ to the Bishop, he will certify him to be a Bastard; being then a Bastard as to Discent, there is no Reason why he should not be a Bastard as to all other Intents, and in particular, a Bastard within 18 Eliz. which is a remedial Act: Also when a Child is born in Adultery, he is born out of the Limits of lawful Matrimony, the Law then taking no Notice of the Husband; and so, tho' we must quash this Order, because it does not appear that the Husband was extra quatuor Maria, during all the Space of Time intervening between the Begetting and the Birth; yet we hope Care will be taken to make a new Order without this Fault. Quashed. But the Defendant was bound over to appear at the Sessions.

The Case of the Church-wardens of Topsham. Hill. 10 Will. III. B. R.

(39) Justices may make an Order, that the last Overseers pay the succeeding what remains in their Hands.

THREE Justices took the Account of the Church-wardens, &c. of Topsham, for the Year 1697, and adjudged that there was thereupon due from them to the Parishioners of Topsham, 69 l. 8 s. 10 d. for the Re-payment whereof to the succeeding Overseers for the Year 1698, the Justices made an Order, to which it was excepted, That the Justices had no Power to make such Order, but only to issue Warrants to distrain; but the Court ruled the Order to be well made, and confirmed the same.

Dominus Rex *versus* Gregory.

(40) Wages.

AN Order was made by the Justices of Peace, for the Defendant to pay 40 s. for Wages generally; and because 'twas not said for what Wages, 'twas moved to quash it; for they can

only settle Wages in Husbandry: But per Cur'. We will intend it for such Wages, since the Contrary does not appear.

The Case of Sylvanus Johnson.

(41) To remove his Wife and Family, ill.

THE Justices of Sussex, on Complaint that J. was come into the Parish of Brood, in the said County, and was likely to become chargeable to the said Parish; and adjudging Sandherst in Kent to be his last legal Settlement, ordered that Johnson, and his Wife and Family, should be removed to Sandherst, which was quashed; because Non constat what is meant by his Family, and some of them may have a legal Settlement at Brood, tho' J. had not.

Christ's *Hospital's Case.* Trin. 11 Will. III. B. R.

(42) Poor Children dropp'd in *Christ-Church* Hospital.

A Poor Child was left in Christ-Church Hospital; upon Complaint of the Wardens of the Hospital, two Justices made an Order on the Overseers of the Poor of the Parish, to receive and maintain the Child, but this Order was quashed; because it was not said, That the Parents were unknown, or likely to become chargeable to the Parish: For tho' a Child of three Months old be helpless, yet the Parents are bound to provide for it. As to the principal Matter which was hinted, viz. That the Hospital was bound to provide for poor Children there exposed; the Court thought there was nothing in that.

Inter *the Inhabitants of St.* Nicholas, Guilford *in* Surrey, *and* Killington *in* Sussex. Trin. 11 Will. III. B. R.

(43) Bastard settled where born.

NORTHY moved to quash an Order of two Justices to remove a Woman and her Bastard-Child from A. to B. whereas it appeared in the Order, that the Child was born at C. Holt C. J. The Bastard must be kept where 'tis born.

Inter *the Inhabitants of the Precinct of* Bridewell, *and the Pariſh of* Clerkenwell. Hill. 11 Will. III. B. R.

(44) Juſtices have no Juriſdiction to remove poor Perſons to or from extra-parochial Places. But Note, in the Caſe of the Inhabitants of *Stokelane* and *Dolting*. *Hill.* 11 *Annæ.* *B. R.* it was adjudged by *Parker* C. J. and the whole Court, that by Virtue of 13 & 14 *Car.* 2. *cap.* 12. *ſect.* 21. the Juſtices may exerciſe the Powers given by 43 *El.* and that Act, in all extraparochial Places, containing more Houſes than one, ſo as to come under the Denomination of a Vill or Townſhip.

A Special Order of Seſſions was, That H. was bound Apprentice, and ſerved ſeven Years to a Hemp-dreſſer, within the Precincts of Bridewell, and afterwards he lived nine Years in Clerkenwell Pariſh, but gained no Settlement there: The Juſtices ſent him to Bridewell as his laſt legal Settlement, by an Order, whith ſet forth Bridewell to be an extraparochial Place. Et per Holt C. J. If a Place is extraparochial, and has not the Face of a Pariſh, the Juſtices have no Authority to ſend any Man thither; and ſo it was reſolved in the Caſe of Sir John Oſborn: Poſſibly a Place extraparochial may be taxed in Aid of a Pariſh, but a Pariſh ſhall not in Aid of that. This is Caſus omiſſus. The Order was quaſhed.

Inter *the Inhabitants of St.* Michael Bedenham *and* Kingſton-Bowſey. Hill. 11 Will. III. B. R.

(45) Order of Reverſal on Appeal, binds not a third Pariſh not Party.

H. Was ſent by Order of two Juſtices from St. Michael Bedenham to Kingſton-Bowſey, and that Order was reverſed upon an Appeal to the Seſſions: Then the Man went to Bedenham, and Bedenham ſent him to D. and a Motion was made to quaſh this Order, becauſe the Order of Reverſal upon the Appeal as to Kingſton-Bowſey, was concluſive againſt all the World; but the Court held, That the Determination upon the Appeal between other Parties, ought not to bind as to a third Pariſh which was no Party.

Anonymus. Hill. 11 Will. III. B. R.

(46) Special Order ought not to conclude to the Opinion of the Court.

AN Order of Seſſions drawn up Specially, in Order to have the Opinion of the Court, was concluded; And if the Court ſhould be of Opinion, then, *&c.* which was held naught; for the Juſtices ought to determine one Way or other, and not make a ſpecial Concluſion, referring to the Court; but it was referred to the Judge of Aſſize.

Inter Inhabitan' Paroch' Eaton-Bridge *and* Inhabitan' Paroch' Weſtram *in* Kanc'. Hill. 11 Will. III. B. R.

(47) AN Order was made at the Quarter-Seſſions, for the Relief of poor Priſoners in Gaols, and providing Materials to ſet them at work, upon the Statutes 14 Eliz. c. 5. and 19 Car. 2. c. 4. whereby a Sum was aſſeſſed on the ſeveral Pariſhes, not exceeding what is allowed by both Acts; but the Order was quaſhed, becauſe they ought to have made diſtinct Orders upon the different Statutes; the Money to be levied by Vertue of each Statute being applicable to different purpoſes.

Inter *the Inhabitants of the Foreſt of* Dean *and the Pariſh of* Linton. Trin. 12 Will. III. B. R.

(48) Extraparochial Places. *Vide ante*, pl. 44.

H. lived ten Years in the Foreſt of Dean, and then died, and left ſeveral Children: Two Juſtices made an Order to remove them to Linton in Herefordſhire. Et per Holt C. J. If a Place be a reputative Pariſh, and have Church-wardens and Overſeers of the Poor, it is within 43 Eliz. tho' in Truth it be no Pariſh; but if it be merely extraparochial, as the Juſtices cannot ſend to ſuch a Place, ſo they cannot ſend from it: As it is exempt from receiving, ſo it ſhall not have the Benefit of removing, for they have not proper Perſons to complain. Perſons in extraparochial Places muſt ſubſiſt on private Charity, as all Perſons did at Common Law before 43 Eliz. which enacts, That every Pariſh ſhall keep their own Poor; in Conſequente of which the Juriſdiction of Removals was firſt ſet up before the Statute 14 Car. 2. For unleſs the Poor were removed to their own Pariſhes, every Pariſh could not maintain their own Poor. But the Statute of 43 Eliz. does not extend to extraparochial Places. Gould J. ſtarted a Queſtion, If the Juſtices of the County where the Pariſh, wherein he was laſt legally ſettled, lies, might not make an Order upon the Pariſh to make a Rate for the Relief of this poor Man in the extraparochial Place; becauſe not having gained a Settlement there, he remains an Inhabitant of that Pariſh ſtill, elſe the Man may be ſtarved for Want of Relief? Holt C. J. Quaſh this Order, and then go and get an Order: Foraſmuch as H. was ſettled in the Pariſh of Linton, and is not able to provide for himſelf: Theſe are, &c.

Inter

Inter *the Inhabitants of* Chalbury *and* Chipping-Farringdon. Trin. 12 Will. III. B. R.

(49) Pariſh, upon whom an original Order is made, cannot remove till that be reverſed.

H. Was removed by Order of two Juſtices, from the Pariſh of A. in Warwickſhire, to Chalbury in Oxfordſhire, from thence by Order of two Juſtices, to Chipping-Farringdon in Berkſhire. It was objected, That Chalbury ought to have appealed, and got the Order upon them diſcharged, which Holt C. J. agreed; For ſending the poor Man to another Place, is falſifying the firſt Order, which cannot be done, but by Appeal; for the Order of two Juſtices is a Determination of the Right againſt all Perſons, till it be reverſed: Chalbury ſhould have appealed from the Warwickſhire Order, and got that ſet aſide, and ſent the Man back thither, and the Juſtices there ſhould have ſent him to Chipping-Farringdon; therefore naught.

Inter *the Inhabitants of* Ware *and* Stanſtead Mount-Fitchet. Trin. 12 Will. III. B. R.

(50)

AN Order was made by two Juſtices, to remove H. with his Wife and Children, from Ware in the County of Eſſex, to Stanſtead in the ſame County. Exception was taken to this by Mr. Eyre, 1ſt, Becauſe it was, with Wife and Children. 2dly, Becauſe it was ſaid, it appears upon Examination before us, or one of us, *&c.* and the Examination ought to be before both, becauſe both are to make the Judgment of Removal. Mr. Cowper would have diſtinguiſhed this as the firſt Exception from the Caſe of Mich. 10 W. 3. ante Pl. ... Of his Wife and Family, becauſe he might have Servants not removeable, but Children ought to follow their Parents. To the ſecond he ſaid, That by 14 Car. 2. c. 12. the Complaint is directed to be made to any Juſtice, and in Conſequence one Juſtice may examine; and it was only neceſſary that two ſhould join in removing: Sed Cur. contra in both. To the firſt Holt C. J. ſaid, Suppoſe H. had put his Son out to Service at ſixteen Years old at B. and accordingly he had ſerved there a Year, and after the Father comes to live at B. himſelf, and the Son to live with him; ſuch an Order would remove the Son, tho' he be not removeable. To the ſecond Gould J. ſaid, the Statute directed, and the Practice was, to make Complaint to one Juſtice, and he grants his Warrant to bring the poor Man before two Juſtices, and then they two examine and remove.

Examination muſt be by both Juſtices.

Dominus Rex *versus The Inhabitants of* Long-Critchell. Mich. 12 Will. III. B. R.

(51) Order of Execution.

A Man was removed from the Parish of All-hallows to the Parish of Long-Critchell. He goes from Long-Critchell to P. they got several Orders from two Justices, by Way of Execution of the first Order, to remove him from P. to L. But all of them were quashed, because P. ought to have made an original Complaint, and upon that have got an Order, and not have grafted on the Order of Removal from A. to L. tho' they might have used that as Evidence to induce the Justices to make such original Order; for P. is a third Parish, against which L. is not bound by the Order of Removal from A. to L. but may contest the Right of Settlement with them. Mr. Upton took an Exception, that the inforcing Orders did not appear to be made by two Justices, Quorum unus: And Holt C. J. seemed to think that a good Exception, because such Persons as cannot make an Order, cannot execute it: But the Orders were quashed upon the first Reason.

Inter *the Inhabitants of* Thackham *and* Findon *in* Sussex. Hill. 12 Will. III. B. R.

(52) Two Justices Order not appealed from binds the Parish upon which it is made, till a new Settlement is gained.

A Poor Person was removed in 1694, from West Starring to Findon; Findon does not appeal. In 1700 the Man comes to Thackham, and Thackham sends him by Order of two Justices to Findon; Findon appeals, and the Order was discharged. All three being now brought up by Certiorari, it was moved to quash the Order made upon Appeal, and urged that Findon was bound by the first Order from West Starring to them, from which they never appealed, with respect to all the World, and are concluded to say, That the Place of his last legal Settlement was not with them: But in respect of the Distance of Time, the Court could not tell but he might have gained a new Settlement at Thackham, and that might appear to the Justices, and they might have good Ground to discharge the Order of the two Justices; then the Counsel offered to produce an Affidavit, That there was no new Settlement proved; but the Court held they could not examine that by Affidavit, nor enquire thereby into the Reason of making the Order. Ex motione Mr. Shelly.

Ditton's

Ditton's *Caſe*. Paſ. 13 Will. III. B. R.

(53) Order for diſcharging Apprentice, the Maſter not appearing.

MOVED to quaſh an Order made for the Diſcharge of an Apprentice: The Queſtion aroſe upon the Clauſe of the Statute, which directs, That upon the Appearance of the Maſter the Apprentice may be diſcharged by four Juſtices, after the next Juſtice hath endeavoured to compoſe the Matter in difference. In this Caſe it was objected, That Ditton the Maſter was bound over to appear, and did not; and the Juſtices have but a limited Juriſdiction; and 'tis expreſly directed by the Act, that this Diſcharge is to be made on the Appearance of the Maſter; beſides, there is another Remedy to proceed on the Recognizance, which is forfeited by not appearing.

Per Cur'. The Act muſt have a reaſonable Conſtruction, ſo as not to permit the Maſter to take Advantage of his own Obſtinacy; and it would be very hard, That ſuppoſing the Maſter is profligate and runs away, the Apprentice ſhall never be diſcharged: Afterwards Exception was taken, becauſe it appeared upon the Face of the Order, That Ditton was a Collarmaker, & non conſtat what the Trade is, nor that it is within the Statute; like Comfort's Caſe, where one was bound to a Manteau-maker, when there was no ſuch Trade within the Statute, nor at the Time of the Statute: And in this Caſe it was ſaid, That the Juſtices might make the Maſter make Reſtitution of part of the Money, and that it hath been ſo adjudged.

Inter *the Inhabitants of* Watford *and* Wendover. Paſ. 13 Will. III. B. R.

(54) Appeal from Order of Corporation-Juſtices muſt be to the Seſſions of the County, not of the Corporation.

TWO Juſtices of St. Albans, made an Order, That whereas they were credibly informed, that Wendover was the Place of H.'s laſt legal Settlement; but no where adjudged it to be ſo; from this Order there was an Appeal to the Quarter-Seſſions of St. Albans, where it was confirmed; and both were quaſhed; the firſt, becauſe there was no Adjudication of what was the Place of his laſt legal Settlement; and the ſecond, becauſe the Appeal ought to have been to the Seſſions of the County, not of the Corporation; and as it was, 'twas coram non judice.

Inter *the Inhabitants of* Suddleſcomb *and* Burwaſh. Trin. 13 Will. III. B. R.

(55) Complaint that H. is likely to be chargeable, not enough without Adjudication; but *Whereas it appears to us, on Complaint,* &c. *that* H. *is likely,* &c. is ſufficient.

EXCEPTION was taken to an Order of two Juſtices, becauſe it was only ſaid to be complained by the Church-wardens, that the Perſon removed was likely to become chargeable, but not adjudged ſo by the Juſtices. Holt C. J. ſaid, That the Juſtices cannot remove a Man, unleſs he be likely to become chargeable, for otherwiſe they might remove a Man of an Eſtate; and he took a Diverſity, that where the Order is, Whereas it appears to us, *&c.* on the Complaint, *&c.* that *J. S.* is likely to become chargeable to the Pariſh, that will be well enough; but where it is, as here, Whereas Complaint has been made, *&c.* that is ill: But it was agreed to be referred to the Judge of Aſſize. Poſtea, Paſ. 2 Ann. B. R. The Caſe of the Inhabitants of Darnall in Cheſhire, the ſame Reſolution. Poſtea, Paſ. 2 Ann. B. R. the ſame Reſolution. It ought to appear, that the Perſon removed, is a Perſon removeable, and there ought to be a particular Averment, That he is likely to become chargeable.

Dominus Rex *verſus* Johnſon. Trin. 13 Will III. B. R.

(56) Seſſions may make original Order to diſcharge Apprentice.

THE Juſtices of Peace at Newcaſtle in Northumberland, diſcharged an Apprentice by an original Order made at the Seſſions, without any previous Application to a Juſtice of the Peace, to endeavour to compromiſe the Matter, as the Statute directs; and after ſeveral Debates it was adjudged, That if this had been a new Thing, the Court would have thought a previous Application to a Juſtice neceſſary; but there having been ſo many original Orders made at Seſſions, brought into this Court and confirmed here, 'twas too late to call this Matter in queſtion; ſo the Order was confirmed.

Minchamp's *Caſe.* Trin. 13 Will. III. B. R.

(57) Juſtices at Seſſions are proper Judges, whether fit to oblige H. to take Apprentice, or not.

HE being a Merchant at Mile-End, two Juſtices bound a poor Girl Apprentice to him; he appealed to the Seſſions, and the Order was diſcharged; becauſe they thought it unfit to compel a Merchant to take an Apprentice; and now this Court on Conſideration of the Matter, confirmed the Order of Seſſions; becauſe the late Act having made Perſons compellable to take Apprentices, and given an Appeal to the Seſſions, it was in the Diſcretion of the Juſtices at Seſſions to determine, Whether

ther it was or was not fitting to put an Apprentice upon any one; and therefore the Court would not diſturb what the Seſſions had done, but confirmed the Order.

Inter *the Pariſhes of* Swanſcomb *and* Shensfeild. Paſ. 1 Ann. B. R.

(58) Order reverſed is final only between the Parties: Order confirmed or not, appealed from, is final as to all the World.

A Poor Man was ſent by two Juſtices to Shensfeild, and upon an Appeal the Order was confirmed; afterwards Shensfeild ſends him by an Order to Swanſcomb: All theſe Orders being brought up by Certiorari, the Order to ſend him to Swanſcomb was quaſhed, becauſe by the Determination of the Juſtices in Affirmance of the Order on the Appeal, Shensfield was eſtopped againſt all the World to ſay, That was not the Place of his laſt legal Settlement; for the Juſtices cannot remove, but to the Place of the laſt legal Settlement, and ſhewing any later Place of Settlement will diſcharge the Order on the Appeal; and the Diverſity is between an Order diſcharged and an Order confirmed upon Appeal, or not appealed from. In the firſt Caſe, the Matter is at large as to all Places, but the Place to which the poor Man was ſent, which, upon the Appeal, was determined not to be the Place of his laſt legal Settlement. But in the later Caſes, the Place to which he was ſent, is bound, and the Order final and concluſive as to all the World.

Inter *the Inhabitants of* Weſton Rivers *and St.* Peter's *in* Marlborough.

(59) It is not neceſſary to ſhew in the Order, that the Perſon did not rent a Tenement of 10 *l. per Annum.*

UPON an Order of two Juſtices, it was objected: 1ſt, That it was not ſaid that the Woman was poor, &c. but lame and likely to become poor. 2dly, That it was not ſaid ſhe did not offer Security. 3dly, That it was ſaid to be upon Complaint only, and not of the Church-wardens, &c. 4thly, It was not ſaid ſhe rented not a Tenement of 10 l. per Annum. The two laſt were the Objections chiefly inſiſted upon; and the Court was clear as to the firſt of theſe two, viz. That it muſt be upon Complaint of the Church wardens, &c. and ſo appear; but upon reading the Return, another Queſtion aroſe; for the Return ſet forth at large, That upon Complaint of the Church-wardens and Overſeers of the Poor concerning A. to the Juſtices; they the ſaid Juſtices, one of the Quorum, made the following Order, in hæc verba: Foraſmuch as Complaint hath been made to us, *&c.* ſo that it was urged, that the Defect of the Order was ſupplied by the Return of the Certiorari: As to the laſt of the four Exceptions, Holt C. J. ſaid, That before 13 Car. 2. two Juſtices

removed by Conſequence of Law, upon 43 Eliz. becauſe that Statute makes Proviſion, That every Pariſh ſhall maintain its own Poor; therefore the Juſtices conſidered who were properly the Poor of a Pariſh, and they were held to be ſuch as were there ſettled a convenient Time, which was thought a Month, ſo that a Month's Abode made an Inhabitant. Still there remained ſeveral Doubts, which occaſioned 13 & 14 Car. 2. c. 12. upon which Statute the preſent Queſtion ariſes, viz. Whether, if the Power to remove be not founded on 13 & 14 Car. 2. but on the Law, as it was before? And ſince ſuch an Order would ſerve to remove before, why it will not ſerve now, ſince the Statute? Or whether 13 & 14 Car. 2. obliges the Juſtices to alter the Form of their Order? And this depends upon this part of the Statute, viz. Whether it be by Way of giving Juriſdiction or Reſtriction? At another Day Holt C. J. pronounced Judgment: As to the Exception to the not averring that ſhe did not rent a Tenement of 10 l. per Annum, he ſaid, the Secondary had ſearched the Precedents, and they are without this Clauſe, According to the Form of the Orders before 14 Car. 2. And this Order therefore is well enough; and if the Party rents a Tenement of 10 l. per Annum, he may appeal to the Seſſions: As to the other Exception, it is fatal, for no one can diſturb a Man coming into a Pariſh, but they that have Authority to do it: A Complaint, ex Officio, from one not concerned, is nothing, it may be the Pariſh are willing to keep him; and as to the Return, that cannot cure the Order, for they had exerciſed their Authority before; and by the Certiorari they have no Power but to return the Order in hæc verba; and therefore what they think fit to return farther, the Court can take no Notice of.

Defect of an Order not made good by Matter alledged in the Return.

On *Certiorari* Juſtices can only return the Order *in hæc verba.*

Inter *the Inhabitants of St.* George's *and St.* Olave's, Southwark.

TWO Orders were returned, the firſt for ſettling a poor Man, one Thomas Gill, and the ſecond a Confirmation of the firſt, upon an Appeal to the Quarter-Seſſions: The firſt Order recited, That whereas Complaint hath been made to us, *&c.* That *T. G.* had of late intruded into the Pariſh of St. *George*'s, We adjudge him to be laſt legally ſettled at St. *Olave*'s: Theſe are therefore to require you to convey the ſaid *Tho. Gill*, to the Pariſh of St. *Olave*'s; and the Direction upon the Order was, To the Church-wardens and Overſeers of the Poor of the Pariſh of St. *Olave*'s. Quaſhed. For they ought, and can only order the Pariſh-Officers where the Intruſion is made, to make the Removal.

(60) Juſtices cannot command the Officers of the Pariſh whither H. is ſent, to remove him.

Inter *the Parishes of St.* Andrew's Holborn *and St.* Clement's Danes. Mich. 3 Ann. B. R.

(61) Sessions being but one Day in Law, may alter their Judgment and make a new Order; but must certify the latter only.

THE Court of Quarter-Sessions of Middlesex made an Order, and afterwards the same Sessions vacated it by a subsequent Order, and a Certiorari being brought, both Orders were returned thereon. Et per Holt C. J. You should not have returned the vacated Order, but only the latter. This is as if we disliking our Judgment, should the same Term make an Entry of two different Judgments, and return both upon a Writ of Error, which ought not to be: The Sessions is all one Day, and the Justices may alter their Judgment at any Time, while it continues: Thus, at the Old Baily, you see Judgment de Pain fort & dure given, and yet, if the Party will plead, we will set aside that Judgment, and admit him to plead.

OUTLAWRY.

Rex & Regina *versus* Tippin. .... 1 W. & M. B. R.

(1) H. outlawed for Misdemeanor, cannot be thereon fined for the Fact.

ONE was outlawed upon an Information for seducing a young Gentleman to marry a young Woman of a lewd Character, and fined 5000 l. and it was moved in behalf of the Defendant, that he could not be fined upon the Outlawry, because in Misdemeanor the Outlawry does not enure as a Conviction for the Offence, as it does in Cases of Treason and Felony; but as a Conviction of the Contempt for not answering, which Contempt is punished by the Forfeiture of his Goods and Chattels; and if he might be fined now, he must be fined again upon the principal Judgment. And the first was held to be irregular, for the Outlawry in these Cases is not a Conviction, as appears by Fleta, 42. Quamvis quis pro contumacia & fuga utlagetur, non propter hoc convictus est de facto principali.

Attorney-General verſus Baden. Mich. 5 W. & M.

(2) A. Owes Money to B. on a Judgment, and to C. on a Bond; A. is outlawed at the Suit of the Obligee, and his Lands ſeized on the Outlawry; and the Queſtion was, Whether the Coniuſee of the Judgment could extend theſe Lands? And it was held the Outlawry ſhould be preferred, and that the King's Hands ſhould not be amoved, unleſs the Conuzee could ſhew Covin and Practice between the Obligor and Obligee.

Adlame *verſus* Colebatch. Paſ. 8 Will. III. C. B.

(3) 'TWAS moved in C. B. that the Plaintiff might reverſe an Outlawry at his own Charge, upon Affidavit, That the Defendant was actually in the Fleet in Execution for the Plaintiff in another Suit, and he knew it; and it was granted, becauſe the Plaintiff ſhould have brought him to the Bar by Habeas Corpus, and there have charged him with a new Declaration.

Where the Plaintiff ſhall reverſe it at his own Charge.

Lee *verſus* Millard. Mich. 8 Will. III. C. B.

(4) A Like Motion was made upon Affidavit, That the Defendant lived publickly, and was denied. Et per Powell J. Such Motions are frequently granted in B. R. becauſe 'tis a great Charge to reverſe an Outlawry there; for the Defendant muſt appear in Perſon, but here he needs not, and the Charge is but 16s. 8d. not ſo much as a Bailiff's Fees for an Arreſt. We have always denied this Motion of late. 2 Ven. 46.

Arthur's *Caſe*. Hill. 8 Will III. B. R.

(5) ARTHUR was outlawed for Felony upon five Indictments, and afterwards came in, and was brought to the Bar, and asked what he had to ſay, why Judgment ſhould not be given; he produced five Writs of Error. Et per Holt C. J. If there be no Lands, the Attorney-General may confeſs Error, and then he ſhall plead preſently, and be tried upon the Indictments. If there be Lands, there muſt be a Scire Facias againſt the Lords, mediate and immediate, to ſhew Cauſe why he ſhould not have Reſtitution. But if it be ſuggeſted on the Roll that he has no Lands, and the Attorney-General confeſſes it, there needs no Scire Facias.

Error to reverſe Outlawry for Felony; if there be Lands, there muſt go a *Scire facias*; but if Attorney-General confeſs on Record that there are none, no *Scire facias* is neceſſary.

Ano-

Anonymus. Mich. 10 Will. III. B. R.

(6) Defendant need not appear in Perſon to reverſe Outlawry, except in Treaſon or Felony.

H. Was outlawed in two Actions, one was 10l. the other for 40s. and upon reverſing the Outlawry, the Court took Special Bail for the firſt, and an Appearance for the other, upon 4 & 5 W. & M. c. 18. Note, The Recognizance was taken purſuant to 31 Eliz. c. 3. Note, Now per 4 & 5 W. & M. one outlawed, except for Treaſon or Felony, need not appear in Perſon to reverſe an Outlawry, but by Attorney.

Symmons *verſus* Bingoe *and* Cook. Paſ. 4 Ann. B. R.

(7) If two are outlawed, Error to reverſe muſt be brought in the Name of both, but one may be ſummoned and ſevered.

THE Defendant Bingoe being a Feme, and waived upon Proceſs of Outlawry, 'twas now moved on her Behalf, that upon filing common Bail, ſhe might have Liberty to reverſe the Outlawry. Per Cur'. The Writ of Error to reverſe the Outlawry, muſt be brought in the Name of both the Parties that are outlawed; and if one only appears, the other may be ſummoned and ſevered, and then the Outlawry may be reverſed for the Benefit of him who appears only. Before it can be reverſed for want of Proclamations, the Party outlawed muſt give Bail to appear, and to anſwer in another Action.

If H. comes in *gratis*, he may reverſe without Bail; otherwiſe if by *Cepi Corpus*.

If the Party outlawed comes in *gratis* upon the Return of the Exigent, alias or pluries, he may be admitted by Motion, to reverſe the Outlawry, for any other Cauſe, but Want of Proclamations, without putting in Bail. If he comes in by Cepi Corpus, then he ſhall not be admitted to reverſe the Outlawry, without appearing in Perſon, as in ſuch Caſe he was obliged to do at Common Law; or putting in Bail with the Sheriff for his Appearance upon the Return of the Cepi Corpus, and for doing what the Court ſhall order. Appearing by Attorney is an Indulgence by 4 & 5 W. & M. and the Bail is to be ſpecial or common in this, as in other Caſes.

Oyer and Shewing of Deeds, &c.

Salisbury *verſus* Williams. Mich. 4 W. & M. B. R.

(1) Want of *Profert*, only Form.

IN Debt on a Bond in the Grand Seſſions of Wales, the Plaintiff omitted in his Declaration to make a Profert, &c. Judgment was for the Plaintiff; and now in Error this Omiſſion was inſiſted on, and the Court held it only Matter of Form, of which no Advantage could be taken after Verdict, or on a general Demurrer, and therefore affirmed the Judgment. Sid. 249. Cro. Car. 190. Cro. El. 153, 217. 16 & 17 Car. 2. cap. 8.

Morris's *Caſe*. Trin. 7 Will. III. B. R.

(2) Upon *Profert* made unneceſſarily, *Oyer* ſhall not be given.

IN Replevin, the Defendant avowed for a Rent-Charge, and made Title by a Will, and pleaded it with a Profert, and the Plaintiff inſiſted to have Oyer, alledging it was the Avowant's Folly to make a Profert of it, and he ought to take Advantage of it. Et per Cur'. He was not bound to plead it ſo; it is but Surpluſage, and we will not compel him to give Oyer of it.

Roberts *verſus* Arthur. Mich. 13 Will. III. B. R.

(3) Deed remains in Court all the Term it is produc'd; otherwiſe of Letters teſtamentary or Adminiſtration.

UPON the Profert of a Deed it remains in Court all that Term, but no longer, unleſs it be controverted; but Letters teſtamentary, or of Adminiſtration, do not remain in Court; for the Party may have Occaſion to produce them elſewhere. Vide 36 H. 6. 30. Per Cur'.

Where Patents muſt be ſhewn, and where not.

Where the Letters Patent pleaded, are recorded in the ſame Court where the Plea is pleaded, the Party need not ſhew them; but where in another Court he muſt plead them with a Profert in Cur'. or the Exemplification of them under the Great-Seal. Per Holt C. J.

Lon-

Longavill *verſus The Hundred of* Iſleworth. Mich. 2 Ann. B. R.

(4) Denial of *Oyer* where it ought to be granted, is Error; otherwiſe of granting it, where it ought not.

IN Debt againſt the Hundred of Iſleworth; the Defendant pleaded in Abatement, caption del Robbers, &c. the Plaintiff replied nul Caption, &c. upon which it was demurred, and a Reſpondeas ouſter awarded, and now all being the ſame Term, the Defendant craved Oyer of the Writ, and that being ſet forth, pleaded the general Iſſue. Et per Holt C. J. To deny Oyer where it ought to be granted, is Error, but not è contra: Therefore we ought either to grant, or to enter the Denial upon Record, that they may aſſign it for Error. If the Plaintiff will conteſt it, he may ſtrike out the reſt of the Pleading, and demur, in Order to obſtruct the Oyer: And at another Day it was ruled, that the Defendant could not have Oyer, becauſe he had already pleaded in Abatement, and having of Oyer is never to enable the Party to plead in Bar, but to plead to the Writ, which is done already, and therefore paſt.

Armit *verſus* Bream. Mich. 3 Ann. B. R.

(5) Where H. is bound to make a Deed, he muſt ſet it forth.

WHERE a Man has obliged himſelf to make a Deed, and is ſued for not doing it; it is not enough to ſay, that he made the Deed, viz. Leaſe, Bond, &c. but he muſt ſet it forth, That the Court may judge of its Sufficiency; for it ought to be a good Deed; but if it be to deliver, or ſhew, or produce a Deed, that is, a Deed already made, there it is enough to ſay, that he delivered, or ſhewed, or produced it. Per Holt C. J.

Cook *verſus* Remmington. Mich. 3 Ann. B. R.

(6) Defendant demands *Oyer* of an Indenture, which he ought to ſet forth himſelf, and the Plaintiff gives *Oyer*, but imperfect, it is at the Defendant's Peril.

IN Debt upon a Bond, the Defendant demanded Oyer of the Condition, which was, to perform Covenants in an Indenture, and then demanded Oyer of the Indenture; and the Plaintiff gave it him, omitting an Indorſement, which was made before the Execution of the Deed; upon this Oyer the Defendant pleaded Performance; the Plaintiff replied and ſet forth the Indorſement, and prayed Judgment for the Variance. Et per Cur'. 1ſt, The Defendant ſhould have ſet forth the Indenture himſelf, being a Party to it, and ſhould have pleaded Performance to all the Covenants therein. 2dly, The Plaintiff was not obliged to give Oyer of the Indenture, and tho' he did, yet being what he need not do, the ſetting it forth is not at his Peril, as where he is

obliged to ſet it forth; nor is he concluded to ſay, That there is more contained in the Indenture, but at Liberty, as well as if the Defendant himſelf had ſet it forth; and the Court held, That as the Defendant was bound to ſet it forth, ſo he was bound to ſupply this Omiſſion and make his Plea compleat; and for this Judgment was given for the Plaintiff.

Pardon General and Special.

Dominus Rex *verſus* Parſons. Hill. 3 W. & M. B. R.

PARSONS was indicted, convicted, and attainted for the Murder of Mr. Wade, and pleaded their Majeſties Pardon; and Note, it was for Murder by expreſs Words, without any Non obſtante; the Non obſtante being taken away by the Statute of W. & M. And Holt C. J. asked for the Writ of Allowance, which ſhould certify he had found Surety of the Peace within eight Months after the Pardon; whereupon the Writ of Allowance was read: And Holt C. J. ſaid, That the Court ought not to allow the Pardon till thus certified, and that this was a Condition precedent, by the Statute of Ed. 3. and Winnington moved, that the Pardon ought not to be allowed; arguing, That the Crime could not be pardoned: But Holt C. J. ſaid, there was as good Reaſon why the King ſhould pardon an Indictment of Murder, which is his Suit, as why a Subject ſhould diſcharge an Appeal, which is the Suit of the Subject; and that the King was by his Coronation-Oath, to ſhew Mercy as well as to do Juſtice. He ſaid, the Statute of 2 Ed. 3. c. 3. meant only, that the King ſhould be fully informed, before he pardoned any Felony; and that the Reaſon of that, and other reſtrictive Statutes, was, for that after the Statute of Glocester, c. 9. upon a Murder done, it was uſual to apply to the Lord Chancellor, and gain a Pardon by undue Means and falſe Suggeſtions, with general Words in it; and this was the Occaſion of thoſe reſtrictive Statutes, that Application ſhould be made to the King in Perſon, to the Intent the King himſelf might be ap-

(1) Pardon for Murder not to be allow'd without Writ of Allowance; certifying Sureties taken for the Peace.

King may pardon Murder by expreſs Words.

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prized of the Matter. By 13 R. 2. c. 2. great Difficulties are put upon thoſe that ſhall be Suitors for a Pardon of Murder, they are to incur a Penalty, &c. but this was found grievous to the Subject, and therefore was repealed by 16 R. 2. c. 26. which ſhews the Neceſſity there is, that the King ſhould have a Power to pardon; upon which the Pardon was allowed.

Foxworthy's *Caſe*. Hill. 1 Ann. B. R.

(2) One pardon'd ſhall not be charged in Cuſtody with Civil Actions.

FOXWORTHY pleaded his Pardon, and there was a Miſtake in the Proceedings: At another Day he came, and having got the Fault amended, it was allowed. His Creditors now moved that they might have Leave to charge him with Actions, as in Cuſtodia, but were not permitted to do it: For per Holt C. J. That might defeat the Queen's Pardon, by rendring him incapable of performing the Condition, which is, to go beyond the Seas, &c. and this is not unreaſonable; for without the Pardon, the Attainder had continued, and he muſt have been hanged; and there is no Reaſon why the Pardon ſhould put the Creditors in a better Condition than otherwiſe they would have been, to the Prejudice of the Party; for the Pardon was given for his Benefit, and not for the Benefit of his Creditors.

Palatine Counties of Cheſter, Durham, &c.

Willbraham *verſus* Poley. Trin. 12 Will. III. B. R.

Error to the County Palatine of *Cheſter*.

MR. Acherley moved the Court to ſtay the Return of a Writ of Error out of Chancery, to reverſe an Outlawry in the County-Palatine of Cheſter, according to the Opinion of my Lord Coke, 4 Inſt. 214. quod vide; ſed non allocatur; for this old Uſage is gone by 32 H. 8. c. 43. and 33 H. 8. c. 13. There were no Outlawries in Cheſter

before 33 H. 8. c. 13. for Coroners are there introduced by that Statute; and there was no Chief Juſtice in Cheſter till Q. Elizabeth's Time, for till then there being but one, there could be no Chief. Vide the Account of this Cuſtom at large in Dyer 345. 320, 321.

Pariſh, Town, Vill, &c.

Rudd *verſus* Morton. Mich. 4 W. & M. B. R.

(1) Evidence of a reputed Pariſh within 43 *Eliz.*

UPON a Trial at Bar in Replevin, wherein the Defendant avowed as Overſeer of the Poor; the Queſtion was, Whether Stratton was a reputed Pariſh of it ſelf, or part of the Pariſh of Biggleſwade in Bedfordſhire? Et per Cur'. To make Stratton a reputed Pariſh, within 43 Eliz. it muſt have a parochial Chapel, and Chapel-wardens and Sacraments, at the Time the Statute was made; and becauſe the pretended Pariſh of Stratton had but one Chapel-warden, whoſe Office it was to collect the Rates taxed upon Stratton, and pay them to Biggleſwade, and the Sacraments and Sacramentals were alſo at Biggleſwade; they were held part of the Pariſh of Biggleſwade, and not a reputed Pariſh within 43 Eliz. and their having a diſtinct Overſeer, and maintaining their own Poor, was not thought ſufficient to make them a diſtinct Pariſh.

Pariſh ſhall be intended a Vill, prima facie; adjudged Mich. 6 W. 3. Wilſon verſus Laws. Vill *quid.*

If a Place be named generally, that Place ſhall be taken to be and intended a Vill; adjudged Mich. 10 W. 3. B. R. Vinkeſton *verſus* Ebden.

Dominus Rex *verſus* Barnard. Mich. 8 Will III. B. R.

(2) Regularly a Conſtable is to be choſen in the Leet or Turn; may be in a Corporation by Cuſtom.

INDICTMENT, for that he being choſen Conſtable in a Corporation, according to Cuſtom debito modo, refuſed to take upon him the Office; and upon Demurrer it was ſaid per Holt C. J. That at Common Law, all Conſtables were choſen at the Leet: Where there is no Leet at the Turn, Whether by the Steward or the Homage, has been a great Queſtion? But without Queſtion, a Corporation, of common Right, cannot chuſe a Conſtable: By Cuſtom they may, as having the Government of the Place repoſed in them; but then they muſt preſcribe for it.

PARLIAMENT.

Prideaux *verſus* Morris. Trin. 2 Ann. B. R.

(1) No Action lies at Common Law againſt an Officer for a falſe Return of Members to Parliament, unleſs where the Right is determined, or cannot be determined in Parliament.

IN an Action on the Caſe for a falſe Return of Parliament-Men, againſt the Sheriff, the Plaintiff declared, That whereas he was duly elected, the Sheriff returned A. B. to be duly elected, who was, in Fact, not duly elected. Mr. King objected, That the Right of Election was only to be determined in the Houſe of Commons; for that it was a parliamentary Matter, which ought not to be tried here, no more than the Right of Precedence. Mr. Eyre contra, That this Court may determine what is an Act of Parliament, 8 Co. 1. Their Privileges Mo. 67. 1 Ro. 903. Dyer 275. the Right of Peerage; and here the Right of Election is no otherwiſe in Queſtion, than as it is incident to the Falſity. Holt C. J. The Cauſe of the Plaintiff's Suit is a Wrong done out of Parliament, and whatever falls under the Reguletion of Law, and is done out of the Houſes of Parliament, is ſubject to the Law of the Land; for Laws are to be executed out of Parliament; but as for the Rules of the Houſe,

as Sitting, Meeting, &c. they are within the House, and the Judges cannot know them, there being no Practice of them out of Parliament: But if the Parliament should make a Law concerning them, or they should become necessary to be determined on the Account of some other Matter cognizable by the Judges, the Judges must take Notice and determine them, as in Bynion's Case.

King's Courts may judge of Parliamentary Matters incident.

And Holt C. J. seemed to be of Opinion: 1st, That for a double Return, no Action lay against the Sheriff before the Statute of 7 & 8 W. 3. c. 7. not only because 'tis the only Method the Sheriff has to indemnify himself; but when the Right comes to be determined in Parliament, one Indenture returned is taken off the File, and then there is no double Return. 2dly, He seemed to think, that for a false Return the Party could have no Action, where there might be a Determination in the House of Commons, because of the Inconvenience of contrary Resolutions; and so if a Suit be between A. and B. A. is voted elected, B. cannot bring an Action, and say, that he was duly elected and returned, because his Name does not appear upon Record; and he is estopped to say, that A. was not duly elected and returned; but where the Right of Election, either is determined, or cannot be determined in Parliament, as in Case of a Dissolution, an Action lies for the false Return; for the Courts at Law can neither anticipate nor contradict their Judgment. Upon a Writ of Error of a Judgment in C. B. for the Defendant.

Domina Regina *versus* Paty, *& al'*. Hill. 3 Ann. B. R.

(2) On Commitments by the House of Commons for Privilege, no Court can deliver on a *Habeas Corpus*: Held by three Judges against *Holt* C. J.

THE Defendants having been committed to Newgate by the House of Commons, were now brought into Court by several Writs of Habeas Corpus, and the Cause of their Commitment was returned to be a Warrant signed, Robert Harley, Speaker, requiring the Keeper of Newgate to take into his Custody, the several Persons, Defendants, for having commenced and prosecuted an Action at Law against the Constables of Aylesbury, for refusing their Votes in the Election of Members of Parliament, in Contempt of the Jurisdiction and open Breach of the known Privileges of the House of Commons. Mr. Lechmere, Page, Mountague, and Denton, who were of Council for the Prisoners, prayed that they might be discharged for several Reasons. 1st, Because the Warrant was not under Seal, as it ought to be. 2dly, Because the Commitment was to remain during pleasure. 3dly, Because they had done no unlawful Act; for the Prosecution of a Suit is lawful, and no Breach of the Privilege of that House. But Powell, Powys and Gould Justices held, 1st, That the Commitment was well enough in Form; because it

it was according to the usual manner of Commitments by that House. 2dly, That the House of Commons were the proper Judges of their own Privileges; and this Court was now estopped to say, That this was not a Breach of the Privileges of the House of Commons, or that the House of Commons had no such Privilege. Holt C. J. contra said, That this was no Breach of Privilege of the House of Commons; that the Commencing and Prosecution of an Action did not necessarily imply a going farther than the bare filing and continuing of an Original, which is no Breach of Privilege; he said, the Suing was no Breach of Privilege, nor can their Judgment make it so, nor conclude this Court from determining contrary; when the House of Commons exceed their legal Bounds and Authority, their Acts are wrongful and cannot be justified, more than the Acts of private Men: That there was no question, but their Authority is from the Law, and as it is circumscribed, so it may be exceeded: To say, they are Judges of their own Privilege and their own Authority, and no Body else, is to make their Privileges to be as they would have them: If there be a wrongful Imprisonment by the House of Commons, what Court shall deliver the Party? Shall we say, there is no Redress, and that we are not able to execute those Laws, upon which the Liberty of the Queen's People subsists? To conclude, all Courts are so far Judges of their own Privileges, and intrusted with a Power to vindicate themselves, that they may punish for Contempts; but to make them, or any Court, final Judges of them, exclusive of every Body else, is to introduce a State of Confusion, by making every Man Judge in his own Cause, and subverting the Measures of all Jurisdictions.

Piling and continuing Original, no Breach of Privilege.

Authority of Commons circumscrib'd by Law.

And now a new Question was started and referred to the Judges, Whether the Queen ought to allow a Writ of Error in this or any other Case, ex debito Justitiæ, or ex mera gratia? And ten of the Judges were of Opinion, That the Queen could not deny the Writ of Error; but it was grantable ex debito Justitiæ, except only in Treason or Felony. Vide 2 Lev. Thurston's Case. Price and Smith held, That the Subject could not of Right demand them in any criminal Case: Then it was a Doubt, Whether any Writ of Error lay upon a Judgment given on a Habeas Corpus?

Writ of Error is of Right in all Cases, except Treason and Felony.

Coudell *versus* John. Hill. 5 Ann. B. R.

(3) Action lies not for a false Return, but upon the Statute 7 & 8 W. 3.

IN Case; the Plaintiff declared that he was elected Member of Parliament for such a Borough, pursuant to the Queen's Writ, &c. and that the Defendant returned two other Persons to be elected, and that he the Plaintiff petitioned the House, and was adjudged by them

them to be duly elected, and his Name ordered to be inserted in the Return, and the Name of the other to be raſed. After Verdict, on Not guilty, the Defendant moved in Arreſt of Judgment, that here is no Cauſe of Action; for it appears now, the Plaintiff has had the Effect of his Election; he is returned; he has his Place; there is nothing wanting wherein he can pretend himſelf injured, but the Coſts he has been at in the Proſecution; and as to them it ought to be ſuppoſed, that the Houſe conſidered of them. This was endeavoured to be made good upon the Statute 7 & 8 W. 3. But Sir Tho. Parker, for the Defendant, anſwered, That this Declaration cannot be taken to be founded upon that Statute, becauſe the Fact was laid not agreeable to it, nor was it ſuch an Action as was intended by the Statute, which differs from a general Action; for firſt, an Action grounded upon a general Prohibition of a Statute, ought not to be for the Party only, but the Queen and Party tam quam; for a Fine is due to the Queen for the Breach of the Statute, as well as Satisfaction to the Party injured. Et per Cur'. Where a Statute introduces a new Law, by giving an Action where there was none before, or by giving a new Action in an old Caſe, the Plaintiff need not conclude contra formam Statuti. But if a Statute gives the ſame Action, with a Difference of ſome Circumſtances, as double Damages, &c. the Plaintiff muſt either conclude, contra formam Statuti, or make his Caſe ſo particularly within the Statute, that it may appear to be ſo; and becauſe he had not done it in this Caſe, Judgment was given for the Defendant.

Parſon

Parſon, Vicar and Curate.

Birch *verſus* Wood. Hill. 10 Will. III. B. R.

Curate is removeable at the Will of the Parſon.

WOOD, pretending to be Curate of a Chapel of Eaſe in the Pariſh of Preſton, ſued the Vicar of the Pariſh in the Spiritual Court, for the Arrears of a Penſion claimed by Preſcription; and a Prohibition was granted Niſi cauſa; for that the Curate was removeable at the Will of the Parſon, and ſo cannot preſcribe, but his Remedy muſt be by quantum meruit.

PAUPER.

Anonymus. Mich. 9 Will. III. B. R.

(1) *Pauper* ſhall pay Coſts of Nonſuit.

A Pauper ſhall not pay Coſts, unleſs he be nonſuit; but then he ſhall pay Coſts, or be whipped, per Holt C. J. Quære tamen, for afterwards in another Term, I moved that a Pauper might be whipped for Non-payment of Coſts upon a Nonſuit, and the Motion was denied per Holt C. J. ſaying, he had no Officer for that purpoſe, and never knew it done. Note alſo, If a Pauper gives Notice of Trial, and does not proceed, he ſhall be diſpaupered.

Anonymus. Mich. 11 Will. III. B. R.

MR. Northy moved to dispauper a Parson, who was Plaintiff in an Action, because he had a Living of 40 l. per Annum. Turton and Gould Justices contra, because he swore he was in Debt more than it was worth: Holt C. J. differed from them; for his being indebted, or his Estate being mortgaged, is no reason; 'tis enough, that he has a considerable Estate in Possession. (2) Dispaupering.

Payment and Satisfaction, &c.

Mason *versus* Williams in Canc.

PENDING a Bill in Equity against an Executor, or after a Decree quod computet, an Executor may pay any other Debt of a higher Nature, or as high a Nature; but this must be intended where he has legal Assets; for if he has only equitable Assets, the Court will not indemnify him, and suffer him to prejudice and disappoint the first Suitor; and where there is a final Decree against an Executor, and he pays a Bond, it is a Mispayment; for a Decree is in the Nature of a Judgment. Per Cowper Lord Chancellor. (1) Executor may pay Debts of a higher Nature after a Decree *quod computet*, not after final.

Carter *versus* Sheppard. Pas. 10 Will III. B. R.

UPON a Point referr'd at Nisi Prius, the Case was; H. having a Note of 100 l. upon a Goldsmith, goes to receive it: While he is in the Shop, one Daly brought Money in to pay to the Goldsmith, who thereupon orders H. to receive the Money of Daly; accordingly H. receives 50 l. part of his Hundred, pulls a Bag out of his Pocket, puts the Money into the Bag, lays it down by him, and proceeds to tell the rest; in the mean Time (1) A. receives Money of B. by the Hands of C. 'tis A.'s Money, and he must abide by the Loss.

a Stranger comes in, catches the Bag of 50 l. from him, and runs away: H. brings Trover against the Goldsmith for his Note, pretending the Property of the 50 l. remained in the Goldsmith, tho' put into the Plaintiff's Bag; for he had still a Right to count it over, and so it was not absolutely paid to the Plaintiff. Cur' contra, H. had appropriated the Money, by putting it into his Bag, and might bring Trover for the Bag and Money, as well as if he had put both Bag and Money into his Pocket.

Marle *versus* Make. Trin. 13 Will. III. B. R.

(3) PAYMENT to a Bond with Condition indorsed, is a good Plea before Breach, but not afterwards, no more than to an Action of Debt upon a single Bill; for the Benefit of the Condition is lost when the Breach is made. Per Holt C. J.

Cranmer's *Case in* Canc'.

(4) Legacy to a Creditor, greater or less than the Debt, how to be taken. *Vide Cuthbert* cont. *Peacock. Ante* 155.

MRS. Fisher was indebted in 50 l. to Cranmer, and left him a Legacy of 500 l. and made him Executor, and after the making of her Will, borrowed 150 l. more of him, and died: The Master of the Rolls decreed, that this Legacy should be a Satisfaction of both the Debts, that contracted after the Will, as well as that contracted before; but Harcourt, Lord Chancellor, reversed the Decree, because a Court of Equity ought not to hinder a Man from disposing of his own as he pleases; and when he says he gives a Legacy, we cannot contradict him, and say he pays a Debt; and as to the Debt contracted afterwards, he said there was no Pretence to make this to be a Payment of that: If a Legacy be less than the Debt, it was never held to go in Satisfaction; so if the Thing given was of a different Nature, as Land, it should not go in Satisfaction of Money; so if the Legacy be upon Condition, for by the Breach he may be a Loser, whereas the Will intended it for his Benefit. Note, In all these Cases the Intention of the Party ought to be the Rule.

Peers of the Realm.

Rex & Regina *verſus* Knollys. Trin. 6 W. & M. B. R.

INDICTMENT was found at Hicks's-Hall, againſt Charles Knollys, for the Murder of Captain Lawſon, which was removed into B. R. The Defendant pleaded in Abatement, that William Knollys, Viſcount Wallingford, by Letters Patent under the Great Seal of England, which he produced in Court, bearing Date Auguſt 18. 2 Car. 1. was created Earl of Banbury, to him and the Heirs male of his Body: That William had Iſſue, Nicholas, who ſucceeded him in the ſaid Title, and that the ſaid Honour deſcended to him the Defendant, from the ſaid Nicholas, as Son and Heir. Et hoc paratus eſt verificare. It was replied, That 14 Decemb. 4 W. & M. the ſaid Defendant petitioned the Lords then aſſembled in Parliament, to be tried by his Peers, and the Lords diſallowed his Peerage, and diſmiſſed the Petition. (1)

The Defendant demurred, and the Attorney-General joined in Demurrer.

The firſt Point conſidered per Holt C. J. was, what an Earldom was, and wherein it conſiſted.

Before the Time of Ed. 3. there were but two Titles of Nobility, viz. Earls and Barons.

Barons were originally created by Tenure, afterwards by Writ, and laſt of all by Patent, ſcil. about 11 R. 2. Baron.

As to Earls, 1ſt, They were always created by Letters Patent. Vide Seld. 536. Earl, his Creation and Office.

2dly, An Earldom conſiſted in Office for the Defence of the Kingdom. Vide Bract. Lib. 1. c. 8. Comites had their Name, not from Counties, but à comitando Regem, 9 Co. 49. It may be entailed as any other Office may, within Weſtm. 2.

3dly, Earldoms conſiſt of Rents and Poſſeſſions, &c. which were anciently great. Vide Mag. Chart. the Relief of his Heir is 100 l. this being premiſed, he went on to conſider the Objections:

1ſt, That it is not alledged by the Defendant, that he is unus parium Regni Angliæ, but only unus parium Regni; nor is Banbury alledged to be in England, and an Iriſh-Peer may be made under the Great Seal of England.

King may create an *Iriſh* Peer under the Great Seal of *England*, by expreſs Words.

To this he anſwered, That the Great Seal of England is appropriated to England, and what is done under it has Relation to England, and to no other Place; and tho' the King may create an Iriſh Peer under his Great Seal of England; yet that muſt be by expreſs Words, being by ſpecial Act of Prerogative. An Act of Parliament does not extend to Ireland, unleſs particularly named, and 'tis a foreign Intendment to ſuppoſe him an Iriſh Peer, and therefore is to be rejected.

Place whence Title is taken, not material.

The Place from whence an Earl takes his Title, is not material; 'tis not neceſſary there ſhould be ſuch a Place in England, or indeed any where. Albemarle is not in England, and there is really no ſuch Place as Rivers, tho' we have an Earl of that Name.

2dly, 'Tis objected, That the Defendant ought to have concluded his Plea, with prout patet per recordum, and have produced a Writ to certify the Diſcents.

As to the Writ to certify the Diſcents that is not of Neceſſity, but uſed merely for Expedition; and if his Peerage had been created by Writ, then it would have been triable by the Record, and this a fatal Exception: But Letters Patent may be pleaded and ſhewn to the Court, and the adverſe Party cannot deny them: And as this Caſe is, here being Diſcents, if the Defendant had concluded as the King's Counſel ſay he ſhould, it would have been an impracticable Concluſion, and conſequently void. And in the Precedents cited of the other Side, there were no Letters Patent pleaded; nor could there in this Caſe be any ſuch Iſſue as Earl, or not Earl; for the Letters Patent under the Great Seal could not be denied or queſtioned, but by pleading Non conceſſit.

3dly, That the Defendant is concluded of his Peerage by the Order of the Houſe of Lords.

To this Eyre J. ſaid, The Defendant had a Title to his Honour by legal Conveyance, and that it was under the Protection of the Common Law, and could not be taken from him but by legal Means. That the Houſe of Lords could no more deprive one of a Peerage, than they could confer a Peerage: That the Defendant's Right ſtood upon the Letters Patent and his Legitimacy; that the Letters Patent could not be cancelled without a Scire facias; and that the Defendant could not now be proved a Baſtard or illegitimate.

Houſe of Lords cannot deprive of Peerage.

Judicial Power of Parliament is in the Peers, but 'tis virtually the Judgment of the King.

All Juriſdiction from the Crown.

Holt C. J. gave theſe Reaſons: 1ſt, That this Order was not a Judgment of Parliament; the Parliament conſiſts of the King, the Lords Spiritual and Temporal, and the Commons: The judicial Power is in the Lords only; yet legally and virtually it is the Judgment of the King, if not of the Commons; and Writs of Error in Parliament are coram nobis in præſenti Parliamento'. Vide Fleta, c. 17. All Power of Juriſdiction is deriv'd from the King, if that be an Author to be credited.

The Houſe of Lords has a double Authority, as Parliament, and the Courſe of the Houſe, between which we muſt diſtinguiſh by their Style. Journals are no Records of Parliament, and therefore we cannot take Notice of them, Hob. 110. King and Hunſdown verſus Arundel and Howard. Judgments ought to be given in their proper Style; and therefore, if this Court, which is coram Rege, enter Judgment per Juſticiarios de B. R. 'tis void. House of Peers has a double Authority.

The Houſe of Lords has no Juriſdiction over an original Cauſe mixed with Matter of Fact; becauſe 1ſt, that ſupream Court is the dernier Reſort; beſides that for the moſt Part, original Cauſes are mix'd with Matter of Fact, and it is below the Dignity of ſo ſupream a Judicature, to try a Matter of Fact: 'Tis for this Reaſon, Error in Fact in the Court of King's Bench, muſt of Neceſſity be redreſſed before the Judges of this Court. 2dly, If the Parliament ſhould take Conuzance of original Cauſes, the Subject would loſe his Appeal, ſo much indulged by the Common Law in all Caſes. Cauſes come not thither, till they have tried all other Judicatures: For this Reaſon, within theſe four Years, Judgment was given againſt the Earl of Macclesfield in the Exchequer: He brought Error in the Houſe of Lords, and the Queſtion was, Whether by 31 E. 3. the Exchequer-Chamber ſhould not interpoſe? And the Writ was abated, and it was held, that the Exchequer-Chamber ſhould interpoſe. This Dignity is a Title by Common Law, and if a Patentee be diſturbed of his Dignity, the regular Courſe is, to petition the King, who indorſes it, and ſends it into the Chancery. Vide Stamf. Prerog. 72. 22 E. 3. 5. Long 5 E. 4. 117. The King could give Precedency by the Common Law, but is bound by 31 H. 8. c. 10. But no original Juriſdiction. Error lies not from the Court of Exchequer to the Houſe of Lords. Where a Patentee is diſturb'd of Dignity, how to proceed.

If a Peer commits Treaſon, he muſt be tried by his Peers, and they may order a Trial, but the King may chuſe whether he will make a High Steward.

3dly, No Plea was depending in the Houſe of Lords, for the Defendant did not petition to enjoy; but ſuppoſed himſelf in Poſſeſſion.

4thly, Here was no Judgment. A Court can give no Judgment in a Thing not depending, or that does not come in a judicial Way before that Court: Here the Title of the Earldom was not before them. If Treſpaſs be brought for a Treſpaſs done in the Ground belonging to a Houſe, and it appears at the Trial, the Plaintiff has no Title to the Houſe, yet the Court cannot give Judgment to turn him out.

5thly, A Judgment ought to be compleat and formal: If a Quo Warranto be brought for uſurping Royal Franchiſes, and the Court give their Opinion that the Defendant has no Title; yet unleſs they go on, Et quod ab inde excludatur, &c. it is nothing. So in the Caſe of Lovell, 2 Cro. 284. In Debt on an Obligation, the Defendant pleaded a Bar by Verdict and Judgment in a former Action, Judgment muſt be compleat and formal.

Action, wherein the Entry was, that the Defendant should recover Costs. Et quod eat inde sine die: Here, because there was no Judgment, Quod quærens nil capiat per bre', it was adjudged naught; for Dismission is no Judgment in a Court of Law.

Dismission is no Judgment.

Objection, It is said that this Judgment was given secundum legem Parliamenti.

Answ. Lex Parliamenti must be looked on as the Law of the Kingdom; but admitting it were a particular Law, yet if a Question arises determinable in the King's Bench, the King's Bench must determine it. Vide Dy. 60.

Lex Parliamenti.

14 Car. 2. C. B. Binion versus Eveling. Filing an Original against a Parliament-Man was adjudged to be no Breach of Privilege. If a Man be committed by Parliament, and the Parliament is prorogued, this Court will grant a Habeas Corpus. But no Precedent hath been shewn to warrant the determining Inheritances originally per legem Parliamenti; if it be so determinable, it must be by Act of Parliament, but there is no such; or by Custom, but there is no such Custom; but if Inheritances were determinable in Parliament, without their having Jurisdiction, they would have uncontroulable Power, and res est misera, ubi jus est vagum. And he concluded that Judgment should be given for the Defendant, and accordingly the Indictment was abated: So the Defendant was not tried for the Murder at all.

Inheritances not originally determinable in Parliament.

Lord Banbury's *Case.* Pas. 5 Ann. B. R.

(2) If arrested by the Name of a Commoner, the Court won't try whether a Peer or not upon a Motion.

LORD Banbury was taken on a Latitat sued against him by the Name of Charles Knollys Esq; and it was now moved for a Supersedeas, offering to shew the Letters Patent of Creation, and an Affidavit, that he was the Person; and it was agreed, That if the Latitat had been sued against him by the Name of Lord, it should have been superseded; for the Law supposes a Peer able to answer the Demand of any personal Action; and the Body is only liable for want of being responsible in Substance: And if he had sate in Parliament by vertue of any Writ of Summons, and had been sued as Charles Knollys; but not having sate in Parliament, they could not take Notice of his Peerage, and would not proceed to try it on a Motion.

Sir Thomas Meers *contra Lord* Stourton. In Canc'.

(3) Where a Peer shall depose on Oath or Honour.

SIR Thomas Meers exhibited a Bill against the Lord Stourton, and it was ordered that the Lord Stourton should be examined upon Interrogatories touching his Title; and it was objected, That he being a Peer of the Realm, ought to answer upon his

honour only; and it was ruled by Harcourt Lord Keeper, that where a Peer is to answer to a Bill, his Answer put in upon his honour is sufficient; but where a Peer is to answer Interrogatories, to make an Affidavit, or be examined as a Witness, he must be upon his Oath.

PERJURY.

Dominus Rex *versus* Greepe. Mich. 9 Will. III. B. R.

AN Information for Perjury set forth, That the Defendant, upon giving a Lease and Release in Evidence in a certain Cause, bearing Date the 15th and 16th of July, 1681. executed at Albemarle-House, to which Mr. Stroud was a Witness, swore that Mr. Stroud was the Middle of July, 1681. at Newnham, innuendo Newnham in Devonshire, ubi revera non fuit apud N. prædict. A Verdict was for the King, but Judgment was arrested; and it was held,

1st, That Newnham was but an individuum vagum without the Innuendo, and might be as well Newnham in Middlesex as Newnham in Devonshire, or some far distant Place. And if Newnham was at the next Door, Stroud might be at Newnham, and yet be at Albemarle-House in Middlesex too in the Middle of July.

2dly, That the Innuendo could not restrain the Individuum vagum to Newnham in Devonshire; for it is no Averment, but in the Nature of a Prædict. It may serve for an Explanation to point out, where there is precedent Matter, but never for a new Charge: It may apply what is already expressed, but cannot add, or inlarge, or change the Sense of the precedent Words: So here, the word Newnham did not import Newnham in Devonshire; ergo, the Innuendo cannot inlarge the Importance of it, and make it so significant. Vide Sty. 333. 3 Cro. 428. Goldsb. 191. Hob. 3, 6, 45. 1 Ro. 82, 83, 84. 2 Bul. 81, 82. 1 Ven. 337. Hutt. 44. 4 Co. 20. Yelv. 21. 1 Cro. 321. All. 32.

Innuendo may explain or apply, but cannot add to, or change the Sense.

3dly,

Perjury may be in Evidence to the Credit of a Witneſs.

3dly, That a Man ought not to be drawn into a conſtructive Perjury; and that if the Matter of this Oath was certain, it is material to the Iſſue and ſufficient to be Perjury; and Holt C. J. denied Goldſ. 191. and held, that if a Man gives Evidence to the Credit of a Witneſs, tho' this be not the Iſſue, yet 'tis Perjury.

Charge ought to be equally certain at Common Law, and on the Statute.

Where H. is convict on the Statute, Diſability is part of the Judgment; at Common Law 'tis only a Conſequence.

4thly, As to the Objection, that this was an Information at Common Law, and not on the Statute, that makes no Difference as to the Certainty of the Charge; for 'tis no more infamous now than it was at Common Law; the Difference is only, That where H. is convict upon the Statute, 'tis part of the Judgment to be diſabled; but at Common Law 'tis only a conſequential Diſability: Ergo, in the later Caſe, the King may pardon, and that reſtores him to his Teſtimony; otherwiſe in the former, for in that Caſe he muſt reverſe the Judgment, or cannot be reſtored.

Pleas and Pleadings.

Anonymus. Mich. 1 W. & M. B. R.

(1) Upon an Information in *Middleſex*, the Defendant ſhall have the whole Term to plead; in the Country, till next Term.

IF a Man be bound by Recognizance to appear the firſt Day of the Term, and is charged upon his Appearance with an Information, in caſe the Information be laid in Middleſex, the Party has Time to plead during all that Term, ſo that it cannot come to Trial in the Term; but in caſe it be laid in any other County, the Party ſhall have Time to plead till the next Term; for he is as much concerned to defend himſelf in thoſe Caſes as in any Civil Action; and ſince the Law allows him Counſel, the Law allows him Time likewiſe to conſult with them; for not to allow the Means of Defence, is to take away the Subject's Defence; otherwiſe it is of capital Offences: But Note, in theſe Caſes there is no Counſel. Alſo where the Party comes in by Cepi Corpus, or upon an Outlawry, he ſhall plead preſently, for then he has been guilty of a Contempt. Per Cur', contrary to the Caſe of the ſeven Biſhops.

Woodward *verſus* Cliff. Paſ. 2 W. & M. B. R.

IN Covenant, the Plaintiff declared that he was ſeized in Fee, and that by Indenture made between the Plaintiff and Eliz. his Wife ex una parte, and the Defendant of the other part, teſtatum exiſtit that the Plaintiff and his Wife demiſed. 'Twas objected, That it being ſhewed that the Husband was ſole ſeiſed, the Husband and Wife could not demiſe; ſed non allocatur; for it is not affirmed, but only that by the Indenture 'tis witneſſed, for the Teſtatum is a Rehearſal of that. (2) *Teſtatum exiſtit* is only recital.

Hall *verſus* Engleſtone. Mich. 8 Will. III. B. R.

UPON a Habeas Corpus returnable in Michaelmas Term, if the Declaration be delivered before Craſtinum Animarum, the Defendant muſt plead to try; but upon a Cepi Corpus he is only to plead to enter. So in Eaſter Term, if the Declaration be delivered before Menſ. Paſchæ, the Defendant on a Habeas Corpus muſt plead to try; upon a Cepi Corpus to enter only. (3) Difference between Time to plead on a *Habeas Corpus* and a *Capias*.

Anonymus. Mich. 8 Will. III. B. R.

IF a Declaration be delivered againſt one in Cuſtody, he ſhall have the whole Term to plead in Abatement. (4)

Anonymus. Mich. 8 Will. III. B. R.

BEFORE Joinder in Demurrer, the Defendant may waive his ſpecial Plea, and plead the general Iſſue, per Cur'. But if there be a Rule to plead, ſo as to ſtand by it, and the Defendant pleads a ſpecial Plea, as he may, and the Plaintiff demurs, the Plaintiff ſhall not then waive and plead the general Iſſue. (5) Waiver of ſpecial Pleadings.

Pierce *verſus* Blake. Hill. 8 Will. III. B. R.

THE Defendant pleaded a falſe Plea in Abatement, viz. That the Plaintiff was dead; the Court was moved, that the Attorney might be compelled to ſwear it: Et per Holt C. J. We cannot compel him in any Caſe to ſwear his Plea, but where it is a foreign Plea; but the Attorney, if he puts in a falſe Plea to delay Juſtice, breaks his Oath, and may be fined for putting a (6) Attorney fined for aſſigning Errors notoriouſly falſe and frivolous.

Deceit upon the Court: He remembred a Case where Judgment was given against a Defendant above forty Years of Age, upon which Judgment he brought a Writ of Error, and assigned Infancy, and appearing by Attorney for Error, and the Court fined the Attorney: In the principal Case the Court ordered the Attorney to plead immediately, so as he would stand by it; or the Court, if he did not, would enquire into the Truth of the Plea, and if they found a Deceit and a Trick, they would fine him.

Note, The Court will not order a Man to plead peremptorily till the Rules be out.

Brown *versus* Cornish. Pas. 9 Will. III. B. R.

(7) *Onerari non debet* proper only where there never was a Charge.

INDEBITATUS ASSUMPSIT and Quantum meruit for 20l. The Defendant pleaded, onerari non debet, because he paid the Money at the Time, &c. Et hoc paratus est verificare: The Plaintiff demurred: Et per Holt C. J. 1st, This Plea does not amount to the general Issue, because it admits the Cause of Action. 2dly, Onerari non debet is no Plea here, because he allows the Promise to be a good Promise, but avoids it by Matter of Discharge ex post facto; in this Case he should have pleaded actionem non. But where the Matter of the Plea shews there never was a good Cause of Action, onerari non debet may be proper; thus in Debt on a Bond, Defendant may plead onerari non debet quia riens per discent. 3dly, The Plea was misconcluded, for he ought to conclude to the Country.

(8) Ashton *versus* Sherman. Mich. 9 Will III. B. R. Vide *this Case, title* Executors. Pl. 10. pag. 298.

Anonymus. Mich. 9 Will. III. B. R.

(9) IF Judgment in Ejectment be signed in a Country-Cause for want of a Plea, but no Possession delivered, a Judge in his Chamber at any Time before the Assizes, may compel the Plaintiff to accept a Plea; but if Possession be delivered, he is without Remedy, per Holt C. J.

Gray *verſus* Hart. Hill. 9 Will. III. B. R.

IN Aſſault and Battery, the Defendant pleaded a Writ to the Sheriff returnable in C. B. and a Warrant to him to arreſt the Plaintiff, &c. and did not ſhew from what Court the Writ iſſued, and it was held naught; for it might be a Writ out of the King's Bench or the County Palatine, and they would not intend it a Writ out of Chancery; ſo if H. plead a Judgment, he muſt ſhew in what Court; for to put the adverſe Party to ſearch in every Court, would be infinite.

(10) In juſtifying under a Writ, it is not enough to ſhew where returnable, but muſt ſhew whence it iſſued.

Anonymus. Mich. 10 Will. III. B. R.

THE Court reſented the Number of frivolous ſham Pleas which came before them, ſaying, It was againſt the Duty of Counſel, and againſt the Statute W. 1. c. 29. and that the old Rule ought to be revived, viz. That Counſel ſhould ſet their Hands to the Books delivered to the Judges, which was anciently ſo ordered, that the Court might not be troubled with frivolous Pleas.

(11) Sham Pleas.

Paſmore *verſus Serj.* Goodwin. Trin. 11 Will. III. B. R.

SErjeant Darnel moved for an Imparlance till the next Term; becauſe the Defendant was an Officer of the Court, and the Bill was not filed againſt him, ſo as to give him eight Days within Term to plead; But the Court held, That the Day of the Bill filed is one Day, ſo that the Plaintiff may give Rules that Day; alſo they agreed, that Sundays and Holidays are to be reckoned in. And the Clerks ſaid it was ſufficient that he had four Days in Term, quod curia conceſſit; Mr. Clark ſaid, that anciently there were two Rules given, both four Day Rules; the firſt was, ad reſpondendum, the ſecond Ad reſpondendum peremptorie, which two were now turned into one Eight Days Rule.

(12) Upon Bills filed againſt Officers it is ſufficient, if there be four Days within Term to plead.

Anonymus. Trin. 11 Will. III. B. R.

THE Queſtion was, Whether there ought to be new Rules to plead upon an Amendment? Pew, Clerk of the Papers, ſaid, that if the Plea was of another Term, there ought to be new Rules; otherwiſe if it be a Plea of the ſame Term, becauſe there is a Rule to warrant the Judgment. Holt C. J. Anciently they did not plead de novo after an Amendment; therefore giving

(13) No new Rules to plead after an Amendment, unleſs an Imparlance be given.

ving Rules to plead again, cannot be the ancient Course; because the Practice of Pleading de novo is but of late introduced, but with great Reason: When the Plaintiff amends and gives an Imparlance, there should be new Rules; otherwise not.

Wood *versus* Cleveland. Pas. 12 Will. III. B. R.

(14) Judgment set aside tho' strictly regular, in order to try the Merits.

IN a common Action of Trespass, the Plaintiff signed his Judgment for Want of a Plea; the Defendant after Term, and before the Assizes, offered him a special Plea, or to plead the general Issue, provided the Plaintiff would consent to enter into a Rule, that he should at the Trial be allowed to give special Matter in Evidence; the Plaintiff refused, and executed a Writ of Enquiry: And now Sir Bartholomew Shower moved, that upon paying Costs the Judgment might be set aside, and the Plaintiff obliged to accept their Plea and go to Trial, the Plea being fair and containing special Matter of Title. The Motion was granted, for per Holt C. J. Where the Defendant's Plea was a fair Plea, and no Delay affected, we will interpose; otherwise where a Plea contains special Matter that is questionable and was designed to draw the Plaintiff to demur.

Anonymus. Trin. 12 Will. III. B. R.

(15) How the Defendant shall plead after a voluntary Appearance.

THERE was a Question, If a Man appears voluntarily before Mensem Paschæ in Easter-Term, whether he be obliged to plead to enter? Sir Samuel Astrey and Mr. Clark were of Opinion he was not. But per Holt C. J. There is no difference between a voluntary Appearance and an Appearance upon a Cepi Corpus; for a voluntary Appearance is not good, unless a Writ hath been taken out: And there is no Reason for it; for if the Plaintiff be content with a voluntary Appearance in Ease of the Defendant, there is no Reason why the Plaintiff should be in a worse Condition than if he had arrested him: Let the Rule be, if a Writ be taken out, and the Defendant agrees to appear, he shall appear and plead according to the Return of the Writ, and if the Return be before mensem Paschæ, he shall plead to enter; but if no Writ were taken out, he shall not be obliged to appear; but if a Writ were taken out returnable after mensem Paschæ, he shall have an Imparlance till next Term.

Peirce *verſus* Paxton. Trin. 13 Will. III. B. R.

IN Debt on a Bond, the Defendant Puis darrein Continuance pleaded Payment of Part, and an Acquittance in Abatement: Upon Demurrer Holt C. J. held it a Plea in Bar and not in Abatement. Vide 3 Cro. 342. All. 63, 65. 3 Cro. 157. What is a Bar before the Action brought, is as much a Bar after, for Time makes no difference in the Nature of the Thing. Vide 7 E. 4. 15. Sty. 212. is a dark Caſe. Entry into part differs; for that is without the Conſent of the Plaintiff. But the Plea is not good, becauſe the Acquittance is a Deed, and ought to be pleaded with a Profert. Judgment to anſwer over.

(16) Payment of Part, and Acquittance pleaded *Puis darrein Continuance*, is in Bar.

Anonymus. Trin. 13 Will. III. B. R.

IF an Act of Parliament makes Writing neceſſary to a Common Law Matter, where it was not neceſſary by the Common Law, you need not plead the Thing to be in writing, but give it in Evidence; but where a Thing is originally made by Act of Parliament, and required to be in writing, you muſt plead it with all the Circumſtances required by the Act; as upon the Statute of H. 8. of Wills, you muſt plead a Will to be in writing; but a collateral Promiſe, which is required to be in writing by the Statute of Frauds, you need not plead to be in writing, tho' you muſt prove it ſo in Evidence, per Holt C. J.

(17) Where a Statute creates a new Thing in writing, it muſt be ſo pleaded; but where it only adds it to a CommonLaw Matter, it needs not.

Anonymus. Trin. 13 Will. III. B. R.

IF a Man pleads over, he ſhall never take Advantage of any Slip committed in the Pleading of the other Side, which he could not take Advantage of upon a general Demurrer. Per Holt C. J.

(18) Nothing can be taken Advantage of on a Plea over, which could not on a general Demurrer.

Anonymus. Trin. 1 Ann. B. R.

IF a Man has forfeited his Bail-Bond, and ſo is in miſericordia, and the Court in favour of him ſtay Proceedings thereupon, he cannot afterwards plead in Abatement to the original Action, but muſt plead in Chief.

(19) After Bail-Bond forfeited, Defendant cannot plead in Abatement in the original Action.

Ano-

Anonymus. Mich. 2 Ann. B. R.

(20) By the Course of the Court, if the Plaintiff moves to amend his Declaration the same Term the Defendant's Plea comes in, the Plaintiff need not give new Rules to plead; but the Defendant must plead in convenient Time.

Anonymus. Mich. 2 Ann. B. R.

(21) Reason of Amendment while in Paper.

SINCE Pleading in Paper is now introduced instead of the old Way of Pleading ore tenus at the Bar; it is but reasonable after a Plea to Issue, or Demurrer joined, that upon Payment of Costs the Parties should have Liberty to amend their Plea, or to waive their Plea or Demurrer while all the Proceedings are in Paper.

Fanshaw *versus* Morrison. Pas. 4 Ann. B. R.

(22) *Scire facias* upon a Recognizance of Bail in Error.

SCIRE FACIAS upon a Recognizance entered into before a Judge of the Common Pleas, upon a Writ of Error of a Judgment given in that Court in Debt, conditioned that if the Plaintiff should be nonsuit, the Writ of Error discontinued, or Judgment affirmed, that then he should pay, &c. The Defendant prayed Oyer, and pleaded that the Plaintiff in Error did prosecute the Writ of Error, and assigned Errors, Et quod placitum super prædict. breve de errore adhuc pendet indeterminat', &c. The Plaintiff replied, that the Judgment was affirmed, absque hoc quod placitum pendet indeterminat', &c. The Defendant demurred, and Judgment was given for the Plaintiff in C. B. and now upon a Writ of Error, the Court held, That where a Man pleads a Performance, he ought to plead it in the Words of the Condition of the Bond. 3 Lev. 293. 2 Ven. 221. Dy. 243. but otherwise where he pleads an Excuse; and that the Defendant's Plea is an Excuse in this Case, and therefore it was not necessary to plead that the Plaintiff in the Writ of Error was not nonsuit, nor the Writ discontinued, nor the Judgment affirmed; but that Errors were assigned, & placit' inde pendet indeterminat'.

Performance must be pleaded in the Words of the Condition; otherwise of Excuse.

Negative Plea need not conclude *prout patet per record'*.

2dly, The Court held this Plea was in the Negative, and therefore there was no Occasion for the Defendant to conclude with a prout patet per recordum: But the Plaintiff ought upon this Plea to have replied, that the Record was certified in B. R. such a Term, Et quod superinde talit' process' fuit quod Judi-

cium affirmat' fuit prout patet per recordum; to which, if it was not so, the Defendant might rejoin Nul tiel record.

3dly, The Court held the Replication naught; 1st, Because it makes that Matter of Inducement which should have been the Point in Issue; and, 2dly, Because the Traverse puts a Matter of Record in Issue to be tried by the Country: And upon this the Court were going to reverse the Judgment, but an Exception was started to the Writ of Error, for which it was quashed.

Traverse, that puts Matter of Record in Issue to the Country, is ill.

Domina Regina *versus* Rawlins Mich. 3 Ann. B. R. (23)

Vide *this Case*, *title* Imparlance, pl. 3. Ante 367.

When the Defendant ought to plead to an Information.

Turner *versus* Beale. Pas. 5 Ann. B. R.

IN Assumpsit, the Defendant cognovit actionem, but in Bar of Execution as to his Person, Apparel, Bedding, Tools, &c. pleaded 2 & 3 Ann. c. 16. and shewed that he was actually a Prisoner in the Marshalsea, and that being there, tiel jour & ann he was debito modo discharged by the Justices at such a Sessions, juxta formam Statuti: To this it was demurred and insisted, that it did not appear that he petitioned; and the Justices ought not to assume a Jurisdiction and discharge Prisoners without seeking, or whether they will or not; and the Defendant ought to shew his Qualifications, and that he is within the Benefit of the Act, and it ought not to be put upon the Plaintiff, who is a Stranger, to shew that he was not qualified; Mr. Eyre contra urg'd, That all was aided by juxta formam Statuti. Vide 1 Cro. 314. 2 Cro. 609. Holt C. J. The Sessions cannot intermeddle but upon Application: You must shew your Discharge, and that it was regular and not deficient: The Plaintiff is a Stranger, and 'tis not to come on his Side, that the Discharge was deficient, but you must shew the whole Matter and give him an Opportunity to traverse it. Judgment for the Plaintiff. (24)

Plea upon the Statute, for Discharge of poor Prisoners, ought to shew all Qualifications and Circumstances to bring the Defendant within the Act.

Woodrington *versus* Deverill. Hill. 5 Ann. B. R.

AFTERWARDS, Hill. 5 Ann. inter Woodrington and Deverill. In Debt on a Bond, the same Case happened as before, and then the Case last mentioned was remembred, and without pretending to make good the Plea in Form, the Statute of Amendment of the Law, 4 & 5 Ann. c. 16. was insisted on, viz. That Judgment shall be given as the Right appears, &c. (25)

Pen-

Pengelly for the Plaintiff said, that here appeared no sufficient Discharge, but a good Cause of Action for the Plaintiff. Powell J. said, that Act did not help Substance; that if this sort of Pleading be made good, the Court can never know when particular Jurisdictions act with Authority, and when not; Quod Holt C. J. concessit, saying, this Exposition was to take the Party's Issue from him.

Pledge and Bailment.

Anonymus. Pas. 5 W. & M. B. R.

(1) Pawn-broker.

IF a Pawn-broker refuses, upon tender of the Money, to redeliver the Goods pledged, he may be indicted; for being secretly pawned, it may be impossible to prove a Delivery in Trover, for Want of Witnesses. Per Holt C. J. and Eyre J.

(2) Pawn *quid.*

Vadium, a Pawn or Pledge. In this Case the Pawnee hath a Property, for the Thing is a Security to the Pawnee that he shall be repaid his Debt, and to compel the Pawner to pay it.

And how to be demeaned.

Now, if the Pawn be somewhat that will be the worse for wearing, as Cloaths, &c. the Pawnee cannot use it.

But if it be somewhat that will not be the worse for wearing, &c. as Jewels, &c. the Pawnee may use them, but then it must be at Peril; for if the Pawnee is robbed in wearing them, he is answerable; and the Reason is, because the Pawn is so far in the Nature of a Depositum, that it cannot be used, but at the Peril of the Pawnee; and the using occasioned the Loss. Vide Owen 423. But if the Pawn is laid up, and the Pawnee is robbed, the Pawnee is not answerable.

Also, if the Pawn be of such a Nature, that the Keeping is of Charge to the Pawnee, as if it be a Cow or a Horse, the Pawnee may milk the Cow or ride the Horse; and this is in Recompence of the Keeping.

If a Creditor takes a Pawn, he is bound to reſtore it upon Payment of the Debt; but if his Care in keeping it be exact, and the Pawn is loſt, he ſhall be excuſed, for there is no Default in him.

And in Caſe the Pawn be loſt, the Pawnee hath ſtill his Remedy for the Money againſt the Pawner; for the Law requires nothing extraordinary of the Pawnee; but only that he ſhall uſe an ordinary Care for the reſtoring the Goods.

If a Pawn therefore be loſt before Tender, the Pawnee is not liable, unleſs there be default in him; but if after Tender the Pawnee keeps the Goods, and they are ſtoln, the Pawnee muſt anſwer; for now his Property is determined, and he is a wrongful Detainer, and he that keeps Goods by Wrong, muſt anſwer for them at Peril, in all Events; for his Detainer is the Reaſon of the Loſs. Delivered per Holt C. J. In the Caſe of Coggs and Bernard. Trin. 2 Annæ. B. R.

Poor, Poor's Rate, Vagrants, &c.

[*Vide* Title, *Orders*, *Seſſions*.]

Inter *the Inhabitants of the Pariſh of* Talborn *and* Boſton. Mich. 7 Will. III. B. R.

(1) *Taxation* only, without *Payment*, makes no Settlement.

IT was held, That if a Man is tared, and after Taxation ſtays in the Pariſh forty Days without giving Notice, 'tis no Settlement within the new Statute, unleſs he pays the Tax; for it muſt be taxing and paying, and not taxing only that makes a Settlement, and is equivalent to a Notice in writing.

Inter *the Pariſhes of* Ryſlip *and* Harrow. Hill. 8 Will. III. B. R.

(2) Living in a Pariſh, where H. has Land, gains a Settlement.

PER Holt C. J. Having Land in a Pariſh will not make a Settlement, but living in a Pariſh where one has Land will gain a Settlement without Notice; for the Act of Parliament never meant to baniſh Men from the Enjoyment of their own Lands, and the Law takes Notice of Freeholders, as thoſe that chuſe Members of Parliament and are Jurors. Alſo boarding as a Scholar gains no Settlement, no more than being nurſed in a Pariſh.

The Caſe of the Pariſh of Shoreditch. Mich. 10 Will. III. B. R.

(3) Juſtices may quaſh the whole Rate where the Rule is unequal, and make, or order to be made, a new one.

AN Order of Seſſions was made for quaſhing a Poor's Rate for the Pariſh of Shoreditch. Exception was taken, that by the Statute of 43 Eliz. the Juſtices could not quaſh the whole Rate; but were to relieve the Parties grieved. Sed per Cur'. If a Rate be burthenſome to a whole Set of Men, as in this Caſe it was to Landholders, the beſt Way is to quaſh the whole Rate; and the Chief Juſtice held, That if the Juſtices quaſh this, they may make a new one themſelves, but they are not bound to do it, but may order the ancient Inhabitants to do it.

Inter *the Inhabitants of the Pariſhes of* Harrow *and* Ryſlip. Mich. 10 Will. III. B. R.

(4) Confirmation upon Appeal is final againſt all Pariſhes, otherwiſe of Reverſal.

A. Comes into Harrow, and being likely to become chargeable, was removed to Ryſlip; Ryſlip appealed; and upon the Appeal, A. was adjudged to be ſettled at Ryſlip; afterwards Ryſlip diſcovered that Hendon was the Place of his laſt legal Settlement, and ſent him thither; and the Queſtion was, Whether after the Adjudication upon the Appeal, Ryſlip was not eſtopped againſt all the World, to ſay, that Ryſlip was not the Place of his laſt legal Settlement. Et per Holt C. J. Ryſlip is eſtopped to ſay otherwiſe; for if Ryſlip had not been the very Place of his laſt legal Settlement, the Juſtices muſt have ſent him back to Harrow, who were firſt poſſeſſed of him, for that reaſon, becauſe they were poſſeſſed of him, and he did not belong to Ryſlip. And now this is in Effect the ſame Queſtion again, viz. Whether he belongs to Ryſlip? which Queſtion has been already determined by the Juſtices on the Appeal, who have adjudged that he

was last settled at Ryslip: Now this Point being determined, the Appeal must be final and conclusive; otherwise there would be no end of Things; and the rather as to Ryslip, 1st, Because Ryslip was Party to the Suit wherein this Determination was made, and yet H. may be estopped where he is not Party to a Suit; per Holt C. J. who remembred the Case of Thornton and Pickering, where it was adjudged, That if H be adjudged by two Justices to be the Father of a Bastard-child, he is estopped as to all mankind to say the contrary, and any Man may call him so at his Pleasure. The Case was, A Libel was exhibited in the Ecclesiastical Court, for saying he had a Bastard, and the Defendant suggested for a Prohibition this Adjudication by the two Justices; and the Suggestion being turned into a Declaration in an Attachment on the Prohibition, the Defendant pleaded to it, that the Words were spoken at large without any Relation to the Adjudication by the Justices. Plaintiff replied, and prayed Judgment if he should not be estopped by the Adjudication to say he had not a Bastard.

Afterwards, Hill. 10. this was moved again, and then Holt and Gould held the Adjudication was final as to Ryslip against all Persons and Places, because the Point of his Settlement as to Ryslip was tried in the Appeal; but as to Harrow (for he had been formerly remov'd by them to Hendon, and that Order reversed) they were at Liberty to send him to any other Place, and were not estopped; because the Justices on the Appeal did not adjudge him to be settled at Harrow, tho' they adjudged him now to be settled at Ryslip, so that the other Point was not tried. Turton and Rokeby contra. Adjournatur.

Anonymus. Hill. 10 Will. III. B R.

(5) A *Mandamus* to compel precedent Overseers to come to an Account with the present, quash'd.

A Mandamus was granted to the Justices of Peace on 43 Eliz. commanding them to compel the precedent Overseers of the Poor of the Parish of A. to come to an Account with the present Overseers, and this Writ was now quashed: 1st, For that the Account by 43 Eliz. is to be given to two Justices, and not to the succeeding Overseers. 2dly, Two of the Persons named in the Writ whom the Justices were to compel to come to account, do not appear to have been Overseers.

Inter *the Parishes of* Beckenham *and* Camberwell. Trin. 11 Will. III. B R.

(6)

A Question was made upon 8 & 9 W. 3. c. 3. which enacts, That an unmarried Person hired for a Year, shall not be settled, unless he serves the whole Year, whether that extended on-

ly to cases that might happen after the Act, or to such also as had happened? Et per Cur'. To such only as may happen after the Act: It can have no Retrospect, but declares a Law for the Future, notwithstanding the Words, declared and enacted. Adjudged upon a special Order.

Anonymus. Hill. 11 Will. III. B. R.

(7) Vagrant to be sent to the Place of his Birth, and from thence by Order to the Place of his Settlement.

IF H. being settled at A. becomes afterwards a Vagrant, some Justices have thought that to be a Determination of the Settlement; but I never could think so; for if H. be found a Vagrant within 39 Eliz. c. 4. he may be sent to the Place of his Birth, but then by 43 Eliz. c. 2. he may be sent from thence as a poor Person, to the Place of his last legal Settlement; for his being sent to the Place of his Birth, satisfies the Statute of 39 Eliz. and so both the Statutes stand together. Per Holt C. J.

Dominus Rex *versus The Inhabitants of* Audly. Mich. 12 Will. III. B. R.

(8) A standing Rate cannot be made, but must be varied by Circumstances.

AN Order of Sessions made upon an Appeal from a Poor's Rate, being removed into this Court by Certiorari; the Case was, on Sept. 1. 1665. a certain Rate was agreed to by the Inhabitants of the Parish of Audly, which had been followed ever since till the last Year, when a new Rate was made. Upon Appeal to the Sessions the new Rate was quashed, and the old one ordered to stand; and now it was objected, that it did not appear this was a Poor's Rate, being called a Parish-Levy, which might be as well for the Church as the Poor, and then the Justices had no Jurisdiction; Darnel, The Court will intend it. Holt C. J. Twisden used to say, If a particular Jurisdiction does not shew the Matter to be within its Authority, it must be taken to be out of it. Mr. Parker took another Exception, viz. That the whole Rate could not be quashed at the Complaint of one Man; and also that the old Rate, however just at first, might be unequal now, and therefore the Justices could not make a standing Rate, which last fuit conceſſum per Holt C. J. for Lands may be improved. By 43 Eliz. the Rate must be equal; ergo, it ought to be continually altered, as Circumstances alter. The Justices could not confirm an old Rate, and in this their Order is naught: And by him it was said in this Case, That tho' the Justices at Sessions need not give a Reason for their Order; yet if they give a Reason which is wrong, we must be guided by it, and quash the Order, because it appears to us to be no Reason.

Inter *the Inhabitants of* Mynton *and* Stony-Stratford. Mich. 13 Will. III. B. R.

(9) Reversal on Appeal is final only between the Parties, but Confirmation is conclusive against all the World.

By Order of the Justices a poor Person was sent to Mynton: Mynton appealed to the Sessions, and the Order was discharged, and then by Order the Person was sent to Stony-Stratford, who appealed, and the Order was confirmed; and then by another Order the Person was sent back to Mynton. Et per Curiam. The last Order to send him to Mynton was illegal. Per Holt C. J. If on Appeal to the Sessions, an Order be discharged, that Judgment binds only between the Parties. But when upon an Appeal an Order is confirmed, that is conclusive to all Persons as well as to the Parties, for 'tis an Adjudication that this is the Place of the Parties last legal Settlement, which cannot be avoided by the Parish against whom it is made. It was also held, That a Parish in Reputation is liable, if there be Officers, i. e. Church-wardens.

Anonymus. Pas. 1 Ann. B. R.

(10) Hospital Lands are chargeable to the Poor.

HOSPITAL Lands are chargeable to the Poor as well as others; for no Man, by appropriating his Lands to an Hospital, can discharge or exempt them from Taxes to which they were subject before, and throw a greater Burthen upon their Neighbours. Per Holt C. J.

Inter *the Parishes of* Farringdon *in* Berks, *and* Witty *in* Oxfordshire. Pas. 1 Ann. B. R.

(11) Unmarried Person hired for a Year, marrying before the Year is expired, cannot be removed, and performing the Service, gains a Settlement.

A Servant came into the Parish of S. was hired for a Year, and having served half a Year of the Time, married a Woman in the Parish of Witty; and the Question was, 1st, Whether the Justices on Complaint of the Church-wardens could make an Order to remove him to the Place of his last legal Settlement? 2dly, Whether his serving here would not gain a Settlement? To the first Point it was admitted, That the Contract between the Master and Servant was not dissolved by the Marriage; and that admitting it might be dissolved by an Order made on complaint of the Master, yet without that, and upon Complaint of the Officers only, it could not be dissolved; therefore Broderick (of Counsel) admitted that the Justices could not in the principal Case so remove him, as that he could not come to serve his Master, but held he might be removed, so as that the Order should disturb him and prevent a Settlement; and this he said was a Medium

dium that would neither prejudice the Contract nor evade the Statute. He compared it to an Order to remove on 14 Car. 2. before forty Day's Stay; in which Case the very making of the Order obstructed a Settlement; and it may be executed after the forty Days. Holt C. J. and Powell contra, That an Order to disturb him and not to remove him, was not within the meaning of the Act; disturbing him, without Power to remove, is vain; and this does not unsettle, nor is it like the Case of forty Days. 2dly, It was questioned, Whether such a Stay, &c. would gain a Settlement; because the Statute makes the Party's being unmarried, a Qualification as well as his Stay, viz. If any such Person, being unmarried, being hired, &c. Such Service, &c. So that the Words such Service goes to all, not only the Stay, but the State of the Party. To this Powell inclined, Holt C. J. contra; Such is only such Service, and the Marriage does not hinder the Service; the Contract continues; and suppose the Woman he marries be of the same Parish, shall not that gain a Settlement?

Inter *the Inhabitants of the Parishes of* Cumner *and* Milton *in the County of* Berks. Trin. 1 Ann. B. R.

(12) Father settled at A. removes to B. with his Children, and gains a new Settlement there, and so do the Children, tho' under the Age of seven Years.

UPON a special Order of Sessions the Case was, H. was settled at Cumner, and had several Children born there: Afterwards he removed to Milton, and gained a Settlement there, by renting a Tenement of the Value of 10 l. per Annum. He became Poor, and his Children under the Age of seven Years were sent back to Cumner by Order of two Justices, which was confirmed at the Sessions. Powell J. held, That when a Child is sent with the Parents by reason of Nurture, it gains no Settlement; but here the Children did not come to Milton by Order. The Childrens Settlement shall not be divided from the Father, for that would be unnatural. When a Man gains a Settlement for himself, his Wife and Servants, he shall gain a Settlement for his Children also; but if a Widow having Children under the Age of seven Years, marries a Man of another Parish, the Children shall go with the Mother for Nurture, but after seven Years of Age they shall be sent back to the Parish where their Father was settled, for she cannot gain a Settlement for them in this last Parish, being under Coverture, and having a Settlement there her self only as part of her Husband's Family, from whom she cannot be severed. Holt C. J. Birth is a Settlement, and the first Settlement, and there must be another second Settlement by forty Days, &c. to alter the primary Settlement. A Child under the Age of seven Years is accounted a Nurse-Child. If a Child be put out to Nurse, or for Education, tho' it be above seven Years

old, it gains no Settlement thereby, as it was held in Sir Paul Jenkinſon's Caſe. The Queſtion here is, Whether the firſt Settlement by Birth be altered? It is hard I confeſs to remove the Child from the Father. Gould J. The Child may be removed after the Age of ſeven Years, but not before; he is ſent with his Father for Nurture only. Holt C. J. Suppoſe the Father and Mother come to A. and then go to the Pariſh of B. and within forty Days the Mother be delivered of a Child; the Child, tho' legitimate, ſhall be ſettled where it was born. The principal Caſe is fit to be well conſidered; the Father indeed ought to maintain his Children, but the Queſtion is, Whether the Children by living with the Father gain a Settlement? The Juſtices cannot remove the Children from the Father till he fall to decay. Afterwards this was moved again. Et per Holt C. J. the Queſtion is, When the Father comes with his Children to Milton, and gains a Settlement there, whether that does not alſo give a new Settlement to his Children, and unſettle them as to Cumner, the Place of their Birth? If a Father be ſettled and die, his Wife being big with Child, and after that the Mother dies before ſhe is delivered, and afterwards the Child is born, the Child is ſettled there by his Birth. In this Caſe the Settlement of the Father at Milton, is a Settlement to the Children. The Child is ſettled by Birth only, where 'tis an accidental Settlement. The Order was quaſhed.

Inter *the Pariſhes of* Farringdon *and* Wilcot. Paſ. 2 Ann. B. R.

H. Being ſingle, was hired for a Year; after he had ſerved three Quarters of the Year, he married; and the Juſtices removed him to his Place of laſt legal Settlement. Et per Cur'. The Contract being good, the Juſtices have no Power to remove him from his Maſter before the End of the Year; for they cannot annul the Agreement between Maſter and Servant, unleſs it be upon Complaint of the Maſter. Settled or not ſettled, was not before the Court. But as to that, viz. Whether ſuch Perſon ſerving out the Year would gain a Settlement? Holt and Gould held, the Word unmarried went only to the Hiring. Powell contra, That it went to the whole Service by reaſon of the Word ſuch.

(13) Unmarried Perſon hired for a Year, marrying before the Year expired, but performing the Service, gains a Settlement.

Inter

Inter *Pariſhes of* Little-Kire *and* Woolfall. Trin. 2 Ann. B. R.

(14) Certificate-man is not removeable till actually chargeable.

A Pariſhioner of the Pariſh of A. came to B. with a Certificate according to the late Act of Parliament, and the Juſtices reciting that Matter, and becauſe he was likely to become chargeable to B. ſent him back to A. Winnington moved to quaſh the Order; becauſe he is not removeable till he is actually chargeable by the expreſs Words of the Act 8 & 9 W. 3. c. 30. Et per totam Curiam, the Order was quaſhed, niſi. Mr. Broderick agreed the Exception, but ſaid the Reaſon of the Removal was, becauſe the Certificate was wrong, and that the Seſſions have Authority in this Matter, for an Appeal lies to them within the Equity of 14 Car. 2. where a Certificate is made and ſigned by two Juſtices. Powell J. contra. If there was a Fault in the Certificate, it ought to appear to be the Reaſon why he was ſent back, and the Juſtices at Seſſions have not a Juriſdiction by Way of Appeal upon ſuch a Certificate.

Inter *the Inhabitants of* Malden *and* Fletwick. Trin. 2 Ann. B. R.

(15) Order of Removal of Certificate-man muſt adjudge him to be actually chargeable.

AN Order was made reciting, That whereas Complaint has been made unto us by the, &c. that J. S. who is lately come into the Pariſh of, &c. with a Certificate according to 8 & 9 W. 3. is actually chargeable to the Pariſh; and quaſhed; for the Juſtices muſt adjudge him to be chargeable, or at leaſt muſt ſay it appeared to them that he was ſo; but the Juſtices need not adjudge the Place that gives the Certificate to be the Place of his laſt legal Settlement.

Inter *the Pariſhes of* All-Saints *and St.* Giles's *in* Northampton. Trin. 2 Ann. B. R.

(16) Certificate concludes the Pariſh giving it, only againſt the Pariſh to which it is given. *Vide poſt*, Caſe of *Honiton contra.*

UPON an Appeal a ſpecial Order was made, and the Caſe was, One was born at A. and came and lived at B. ſome Years, but never gained any Settlement there, then he removed to C. for Convenience of getting his Livelihood, and B. gave him a Certificate according to the late Act. The Man became chargeable, and was ſent back to B. who found that he was laſt legally ſettled at A. and ſent him thither. Et per Holt C. J. The Reaſon of the Act of Parliament about Certificates, was only to encourage Pariſhes where poor Perſons were minded to go, to receive

ceive them; and therefore it enacts, That when the poor Person shall be chargeable, the Parish which gave the Certificate shall receive and provide for him as a settled Inhabitant, which Words lay an Obligation upon the Parish which gave him the Certificate to receive and provide for him against that Parish which they gave the Certificate to. But as to all other Parishes, they are as they were before, for the Conclusion is only by reason of the Words of the Act of Parliament, which extend only to the Parish to which he was sent; by Consequence the Conclusion can extend no farther. Powell J. This Way of giving Certificates was a Thing commonly practised before this Act of Parliament, and it was made only to oblige the Parish who gave the Certificate to receive him again of the other Parish to which the Certificate was given: But the Intent of that was not to make a new Settlement which was not before. But per Holt C. J. Such Certificate is a mighty Evidence before the Justices; and so is a Demand and Refusal of a Conversion, which yet being specially found, will not be a Conversion.

Tawny's *Case*. Hill. 2 Ann. B. R.

(17) No *Mandamus* lies to the Overseers to make a Rate to re-imburse former Overseers.

TAWNY being Overseer of the Poor of Little-Port in the Isle of Ely, laid out his Money in the Relief of the Poor, and was turned out of his Office by the Justices, before the End of the Year, by which means he lost the Opportunity of making a Rate to re-imburse himself: Upon this he obtained a Mandamus directed to the Church-wardens and Overseers of the Poor, to make a Rate to re-imburse him; Mr. Parker and Mr. Eyre argued, That there could be no such Charge, neither by Common Law nor by the Statute 43 Eliz. Et per Holt C. J. We cannot order the Parish or Overseers by a Mandamus to make a Rate to raise Money to re-imburse an Overseer, but only to raise Money for the Relief of the Poor, nor can they make a Rate otherwise: The Act of Parliament is expressly so, and must be pursued: An Overseer is not bound to lay out Money till he has it; if he does, he must make a new Rate for the Relief of the Poor, and out of that he may retain to pay himself: Tawny should have done so; he trusted where he needed not have done it; he has not pursued the means the Statute gave him, and we cannot relieve him. Et per tot. Curiam. The Mandamus lies not; ideo cassetur. Et nota per Cur'. The Church-wardens and Overseers may make a Rate of themselves. Weld and Page, pro le Mandamus.

Rate must be for the Relief of the Poor.

Inter *the Pariſhes of* Weſtbury *and* Coſton. Hill. 2 Ann. B. R.

(18) Baſtard born at A. pending an Order of Removal from B. afterwards reverſed, is ſettled at B.

A Woman big with Child was removed by Order of the Juſtices from Weſtbury to Coſton, and pending the Order before the next Quarter-Seſſions, ſhe was delivered of a Baſtard-Child: Coſton appealed, and thereupon the Order of the two Juſtices was reverſed; but the Child was ſent back to Coſton, as the Place of its Birth. Et per Holt C. J. Tho' here be no Fraud, here was a wrongful Removal, and the Reverſal makes all void ab initio: Fraud, or not Fraud, is not material in this Caſe; but the Settlement of the Child depends upon the Removal, for if that was wrong, they ſhall not eaſe themſelves by it.

Tracy *verſus* Talbot. Trin. 3 Ann. Coram Holt *C. J.* *At* Niſi Prius.

(19) Aſſeſments for the Poor ought to be raiſed monthly.

H. Took part of a Houſe in the Pariſh of D. on the 3d Day of Decemb. and was rated as an Inhabitant, and was diſtrained for a Quarter's Rate the Chriſtmas following; but the Diſtreſs was taken before Chriſtmas on a general Warrant made for the whole Year; and in Replevin upon Evidence it was ruled per Holt C. J. 1ſt, That if two ſeveral Houſes are inhabited by ſeveral Families, who make and have but one common Avenue or Entrance for both; yet in reſpect of their Original, both Houſes continue rateable ſeverally, for they were at firſt ſeveral Houſes; and if one Family goes, one Houſe is vacant: But if one Tenement be divided by a Partition, and inhabited by different Families, viz. the Owner in one, and a Stranger in another, theſe are ſeveral Tenements, ſeverally rateable, while they are thus ſeverally inhabited; but if the Stranger and his Family go away, it becomes one Tenement. 2dly, That H. could not be rated for the whole Quarter, for Poor's Rates are to be aſſeſſed monthly by the Statute; and by this means a Man cannot move in the Middle of a Quarter, but he muſt be twice charged. 3dly, That H. could not be diſtrained by Vertue of the general Warrant made before the Rate; but there ought to be a ſpecial Warrant on purpoſe. 4thly, That a Diſtreſs could not be taken for a Quarter's Rate before the Quarter was ended; but the Jury ſaid the Cuſtom was otherwiſe.

Domina Regina *verſus* Hedges. Mich. 4 Ann. B. R.

(20) Upon Appeal from Allowance of Overſeer's Accounts, Seſſions muſt execute their Judgment in the ſame manner as two Juſtices ought to do.

AN Order was made at the Quarter-Seſſions upon Appeal: The Caſe was, Hedges, an Overſeer of the Poor, accounted before two Juſtices, and this Account was allowed; the Pariſh appealed to the Quarter-Seſſions from this Allowance, and they diſallowed the Account, and ordered him to pay ſo much over, which they adjudged to be in his Hands, and for not doing this, they committed him. Mr. Eyre moved to quaſh this Order, becauſe by 43 Eliz. c. 2. ſect. 4. they ſhould have levied the Arrears by Diſtreſs and Sale, and in default of Diſtreſs have committed him: And the whole Court agreed, That the Juſtices at the Seſſions upon the Appeal muſt execute their Judgment in the ſame manner as the two Juſtices muſt do, and that the two Juſtices muſt have ſent their Proceſs to diſtrain, and upon a Return to that, that there was no Diſtreſs, ſhould have committed him. Then Darnel moved that it might be only quaſhed as to this part: Quod fuit conceſſum per Cur'. Then Mr. Eyre objected to that, viz. That the firſt Order, as recited in the Order of Appeal for the Allowance of the Account, was not by two Juſtices Quorum unus; ſed non allocatur: We cannot judge of that upon a Recital, ſo as that you may take Advantage of it; you muſt bring in that Order by Certiorari.

Inter *the Pariſhes of St.* Bride's *and St.* Saviour's. Hill. 4 Ann. B. R.

(21) Apprentice may gain a Settlement, tho' the Maſter has none.

A Poor Perſon was ſent from St. Bride's in London to St. Saviour's in Southwark, and upon an Appeal a ſpecial Order was made: The Caſe was, B. was bound Apprentice for four Years to J. S. and lived out theſe four Years at St. Bride's with him; J. S. was only a Lodger and had no Settlement there. And the Court held the Apprentice was well ſettled in St. Bride's, for he was not a Perſon removeable, nor does his Settlement depend on his Maſter, as that of a Wife on her Husband for a Settlement; but he gains a Settlement for himſelf within 14 Car. 2. by forty Days Inhabitation, and ſo of a hired Servant; but the Matter went off upon another Exception.

Jenkins's *Case*. Paſ. 5 Ann. B. R.

(22) Order to relieve his Father till Seſſions order the contrary, good.

An Order of Seſſions was made, that the Defendant ſhould pay 2 s. per Week towards the Support of his Father, till that Court ſhould order the contrary; which was held good, becauſe it was indefinite, and no ſet Time limited; and if an Eſtate happened to fall to him, they might apply to the Juſtices; otherwiſe if a Time was limited.

Domina Regina *verſus The Inhabitants of* Buckingham. Paſ. 5 Ann. B. R.

(23) Nothing makes a Settlement within 3 & 4 *W. & M.* that is not within the very Words.

A Special Order was made, wherein the Caſe was; H. being a poor Perſon went to Buckingham, where he took part of a Houſe of W. T. at 3 l. per Annum, and inſiſted when he took this Apartment, that he would pay no Taxes for it, but that the Leſſor ſhould; this was agreed to, his Rent being the more and the greater upon that account: This appeared upon Evidence, and alſo that this Apartment before the Taking, and while he continued in it, was diſtinct from the reſt of the Houſe without Communication, and was taxed as a Houſe of it ſelf, and that the Tax was laid upon W. T. the Leſſor; and that while H. lived there he took his Freedom in the Corporation, and once voted as a Freeman at the Election of Bailiffs for the Corporation. The Juſtices at the Quarter-Seſſions adjudged this to be a good Settlement: But upon the Motion of Serjeant Broderick it was quaſhed: He inſiſted that ſince the explanatory Act 3 & 4 W. & M. nothing makes a Settlement within that Statute that comes not within the Words; an explanatory Act implying a Negative of any Thing elſe. Et per Holt C. J. and Powell J. Coming into a Pariſh and being taxed by the Pariſh, made a good Settlement without a Notice in Writing within the Statute Jac. 2. But the Law is altered by 3 & 4 W. & M. and as to his Voting they could not take Notice that that implied a Settlement; for a bare Reſidence might, by the Conſtitution of the Corporation, intitle him to that, and his Voting was an Act that related to the Corporation and not to the Pariſh.

Inter *the Inhabitants of the Pariſh of* Dunsfold *and* Ridgwick. Mich. 9 Ann. B. R.

(24) Two ſeveral Hirings for half a Year, and Service for a Year, not ſufficient to gain a Settlement.

IT appeared by a ſpecial Order, that one was hired as a Servant to live at Ridgwick for half a Year, and after that was hired again to live there for another half Year with the ſame Perſon, and thereupon ſerved a Year in one continued intire Service, but by ſeveral Hirings: Sir Peter King urged, That here was a Service for a Year, and a Hiring for a Year, tho' by ſeveral Contracts; and that the Hiring need not be by one entire Contract, and that ſo it had been held, and he cited a Caſe, where H. took a Tenement of 5 l. a Year, and alſo another Tenement of 5 l. a Year and occupied both; and this was held to be a Renting of a Tenement of 10 l. per Annum. Et per Cur'. It ought to be one entire Contract and one entire Service; the one is required by the Statute as well as the other. If a Service under ſeveral Contracts ſhall gain a Settlement, one that ſerves by the Month, by the Week, or by the Day, may, if he continues a Year, gain a Settlement; one may hire by the Day for Charity; but there is danger of being chargeable in hiring ſuch a Perſon by the Year: For ſuch a Term as a Year it is not ſuppoſed a Maſter would hire one, unleſs able of Body, and ſo a Perſon not likely to become chargeable. Alſo the Chief Juſtice obſerved, that by the Statute of Eliz. the Retainer of Servants was for a Year; that 14 Car. 2. requires forty Day's Stay, and that this was inconvenient, for by gaining a Settlement in forty Days, Servants grew inſolent; and that theſe later Acts, viz. 3 & 4 W. 3. c. 11. 8 & 9 W. 3. c. 30. do but turn the forty Days Service into a Year's Service, and the Hiring to be a Retainer for a Year according to the Statute of Eliz.

Inter *the Inhabitants of the Pariſh of* Honiton *and St.* Mary-Axe. Mich. 9 Ann. B. R.

(25) Certificate concludes the Pariſh giving it, as to all the World.

Vide the Caſe of St. *Giles's* in *Northampton, ante pl.* 16. *contra.*

HE Came to Honiton with a Certificate from the Pariſh of A. after this he went to the Pariſh of B. and now being ſent to the Pariſh of A. the ſaid Pariſh offered to prove that he was ſettled at the Pariſh of St. Mary Axe; and the Queſtion was, Whether A. was bound by the Certificate as to Honiton only, or concluded as to all Pariſhes whatſoever? Et per Cur'. Before the Statute a Certificate was only an Evidence of a private Undertaking between the Pariſhes, in the Nature of a Contract; but now 'tis a ſolemn Acknowledgment, like the Conuzance of a Fine: And thereby the Party is owned to be legally ſettled

ſettled there, and that they will provide for him; and as all other Pariſhes on this Certificate are bound to receive him, ſo the Pariſh that certifies is concluded as to all other Pariſhes. And there is no reaſon why it ſhould differ from an Adjudication, ſince this is the Acknowledgment of the Pariſh ſigned by the proper Officers, and made before two Juſtices of Peace, who are proper Judges, and upon leſs Evidence could have adjudged it a Settlement, by which Sentence all Parties would be bound, and there is no Remedy but to repeal it.

Inter *the Pariſhes of* Evelin *in* Oxfordſhire *and* Rentcomb *in* Gloceſterſhire. Hill. 10 Ann. B. R.

(26) Renting a Mill of 10*l. per Annum* gains a Settlement.

AN Order was drawn up ſpecially to have the Opinion of the Court, Whether renting of a Water-Mill of 10 l. per Annum, would make a Settlement? Et per totam Curiam clearly, a Mill is a Tenement, and the Renting thereof muſt gain a Settlement within the Statute.

Inter *the Pariſhes of* Gatton *and* Milwich. Hill. 10 Ann B. R.

(27) Pariſh-Clerk nominated by the Parſon is in for Life, and gains a Settlement.

AN Order was drawn up ſpecially for the Opinion of the Court; and the Queſtion was, Whether one appointed Clerk of the Pariſh by the Parſon, and executing the Office for a Year, ſhould gain a legal Settlement within 3 & 4 W. & M. of which the Words are, viz. ſhall execute any annual Office or Charge? For it was objected, that this was not an annual Office. Mr. Lechmere contra: The Intent of the Act was, That no Office under an annual one ſhould gain a Settlement, and majus continet in ſe minus. On the general Nomination to the Office of Pariſh-Clerk he is in for Life. Powell J. His being put in by the Parſon makes no difference, no more than where the Conſtable is put in by the Leet and not by the Pariſh; 'tis more than an annual Office, he is not removeable and has Fees. Eyre J. He is but a Servant to the Parſon at Will: Where he comes in by Election, he has an Eſtate for Life by the Cuſtom, but here is no Deed or Writing: How can he have an Eſtate for Life in this Office? Powell J. At that rate he has not an Office at Will, for a Man cannot have an Office at Will without Deed. The Office of Churchwarden was by Common Law, and yet that is for a Year without any Deed or Writing. So 'tis of a Pariſh-Clerk, he is by Common Law an Officer, and is in for Life without Deed; ſo ruled abſente Parker C. J.

POWERS.

Winter *verſus* Lovedore. Mich. 9 Will. III. B. R.

(1) Power to demiſe any Lands, except the demeſne Lands of the Manor. Copyholds are within the Exception.

IN Ejectment a Special Verdict was found, That G. P. was ſeiſed of the Manor of M. and on the Marriage of his Son, ſettled the ſaid Manor to the uſe of himſelf for Life, Remainder to his Wife for Life, Remainder to his Son in Tail, with a Proviſo, That he ſhould have Power during his Life, and ſo the Wife after him, to demiſe the Premiſſes in Poſſeſſion, for one, two, or three Lives, or in Reverſion for one, two, or three Lives, or thirty Years, or for any Number of Years determinable on one, two, or three Lives, ſo as ſuch Demiſe be not of the Demeſne Lands. G. P. reciting that J. S. and his Wife held a Copyhold Tenement for Life, demiſed the ſaid Copyhold Tenement to the Leſſee for thirty Years, to begin after the Death, Surrender, or Forfeiture of J. S. and his Wife; and the Queſtion being, Whether this Leaſe of a Copyhold was purſuant to, and warranted by the Power? It was held in this Caſe by Holt C. J.

1ſt, That any Leaſe, to commence in futuro, is in ſome Senſe a Leaſe in Reverſion, as it is oppoſed to a Leaſe in Poſſeſſion; but a Leaſe within ſuch a Power muſt be conſtrued of a Leaſe to commence in Poſſeſſion after another Leaſe or Intereſt already created before the Reſervation of the Power and not after; and that a Leaſe to commence after any other Leaſe, is properly a Leaſe in Reverſion; but that a Leaſe for Life, to commence after another Leaſe in being, is a concurrent Leaſe; becauſe a Freehold cannot expect, but muſt commence in Poſſeſſion preſently; however, this may be ſaid to be a Leaſe in Reverſion within ſuch Powers.

2dly, That G. P. might make a Leaſe in Reverſion abſolutely for thirty Years, by Vertue of this Power, becauſe the Limitations and Reſtrictions are diſjoined, and the later Part is carried on by Way of Inlargement of the Power; to which Turton and Eyre agreed, Rokeby diſſentiente.

3dly, That this Leaſe was void, becauſe it was of Copyhold Lands; for by a Grant of the Demeſnes the Copyholds will paſs; and by the ſame Reaſon, by excepting the Demeſnes the Copyholds

holds are excepted; and the rather, because the Power is derived out of the Inheritance, and the Tenant at Will by his Leases might destroy the Copyhold, which is unreasonable; and if there were nothing else for the Power to work upon in this Case, he may by Vertue thereof demise the Rents and Services.

Lord Kilmurry *contra* Geery. Pas. 12 Ann. In Canc'.

(2) Power to charge Lands with a Sum of Money, imports Interest thereof also.

IT was held, That if a Man has Power to charge Land with any Sum not exceeding the Sum of 3000 l. he may charge it with 3000 l. and the Interest besides; for the Intention is to charge the Premisses with 3000 l. principal Money, and that of Course carries Interest, and none would lend such Sum on such Security, if the Law were otherwise.

PRESCRIPTION.

Star *versus* Rookesby. Mich. 9 Ann. B. R. Vide *Title* Fences, Vol. 1. *pag.* 335.

Preſentation, Admiſſion, Inſtitution, Induction.

Hele *verſus The Biſhop of* Exeter. Mich. 3 W. & M. B. R.

IN Quare Impedit the Biſhop pleaded, That the Church became vacant on the 15th Day of April, and that the Plaintiff preſented to him on the 19th Day of May following, one Hodder; That he examined Hodder, and found him perſonam minus ſufficien' in literaturâ, ac eâ ratione fore perſonam inhabilem & minimè idoneam ad habend. beneficium cum curâ animarum, and therefore refuſed him on the 20th Day of June, and gave the Plaintiff Notice; and becauſe no other was preſented within ſix Months after the Avoidance, he collated the other Defendant (the Incumbent) who was inſtituted. The Incumbent pleaded to the ſame Effect. The Plaintiff replied, that Hodder, at the Time of his Preſentation, was Vicar of another Church. That he was Homo literatus, and in Prieſt's Orders; that he was licenſed to preach; and had celebrated Divine Service many Years, and was ſufficienter literatus to celebrate the ſame. There was a Rejoinder and Surrejoinder (which were laid out of the Caſe) and thereupon a Demurrer. Et per Cur'. 1ſt, The Ordinary muſt examine in convenient Time, and after that, refuſe in convenient Time; if he does not, he is a Diſturber by his Delay. 2dly, If the Ordinary refuſe, quia criminoſus, he need not give Notice of his Refuſal, for the Crime is as much in the Conuſance of the Patron as of the Biſhop, and in that Caſe the Lapſe ſhall incur from the Avoidance; but if he refuſe, quia illiteratus, he muſt give perſonal Notice, and the Lapſe ſhall incur from the Refuſal. 3 Cro. 119. 1 Lev. 31. Dy. 327. 2 Ro. 364. 3dly, That the Ordinary might well refuſe him now, as unfit for this Cure, tho' he had been allowed for a former. 4thly, It was not determined what Learning was neceſſary: While the Liturgy was in Latin, that Language was undoubtedly neceſſary; now indeed the Liturgy is in Engliſh: But it was obſerved that 13 Eliz. c. 12. requires a Clerk ſhould be able to anſwer his Ordinary, and give an Account of his Faith in Latin, according to the Articles. 5thly, The Court held this Pleading too general,

(1) Where the Ordinary refuſes *quia inſufficiens in literaturâ*, he muſt ſhew in what particular.

Ordinary may examine and refuſe; but it muſt be in convenient Time.

Muſt give Notice of his Refuſal, if it be *quia illiteratus*; *ſecus* if *criminoſus*.

becauſe it was not ſhewn what Learning he was defective in, whereas it ought to be certain, becauſe it is traverſable; and if the Clerk die, to be tried by a Jury and the King's Courts to judge of it; and the Law will the rather require a Certainty, becauſe this Anſwer is to diſable a Man in his Profeſſion, and prevent him of a Freehold. Judgment was given for the Plaintiff.

Dominus Rex & Domina Regina *verſus The Biſhop of* London *and Dr.* Birch. Mich. 7 Will. III. B. R.

(2) Where a new Advowſon is created by Statute, it is ſubject to the ſame Rules of Law and Prerogatives of the Crown as an old one.

IN a Quare Impedit againſt the Biſhop of London and Dr. Birch, for hindring to preſent to the Pariſh-Church of St. James's, the Declaration ſet forth, That St. Martin's in the Fields being a great Pariſh, an Act of Parliament was made 1 Jac. 2. to take the Pariſh of St. James's out of it, and make it a Pariſh of it ſelf with Cure of Souls, and Dr. Tenniſon, who was then Vicar of St. Martin's, the firſt Rector; and appointing the Patronage after the Death of Dr. Tenniſon, to the Biſhop of London and his Succeſſors, and the Lord Jermyn and his Heirs to preſent alternately: Virtute cujus Dr. Tenniſon was firſt Rector, and being ſo, was afterwards made Biſhop of Lincoln, whereupon it belonged to the King and Queen to preſent by Prerogative; to this the Biſhop demurred, and Dr. Birch pleaded the Statute of 25 H. 8. and that by Vertue of the ſaid Act, the Archbiſhop of Canterbury gave Dr. Tenniſon a Diſpenſation to hold this Church in Commendam, which the King confirmed, from the 22d Day of October till the firſt of July following, &c. To this the Attorney-General demurred. 1ſt, It was objected for the Defendant that this Prerogative was unreaſonable; but the Court anſwered, That ſince the King made the Church void, it was no hard Matter that he ſhould be allowed to fill it, and the Patron was not much hurt, for it was only one Life exchanged for another; and Sir Giles Eyre held, That if a Parſon be promoted to be a Biſhop, the Church was void by the Common Law; but the Reaſon of it was not from the Incompatibility, becauſe originally the Biſhop was Incumbent of the whole Dioceſe, and ſerved the Cure by others; and the Court did admit that the Crown did not anciently exerciſe this Prerogative, but the Pope did by Uſurpation; and that notwithſtanding the Statute of Proviſors 25 E. 3. the Pope would collate if the Incumbent was made a Biſhop. 4 E. 3. 5. Owen 144. Then 7 H. 7. c. 8. was made againſt Proviſions, but notwithſtanding that the Pope went on. Vide Cotton 458. Mo. 399. 3 Cro. 526. Owen 144. Win. 94. 2 Cro. 691. Dy. 228. which was but a ſudden Opinion.

Before the Reformation the Pope preſented upon Promotion of the Incumbent.

2dly, They held, That the King's Turn was not ſerved by confirming the Commendam; for the Diſpenſation was only to ſave the Avoidance, and the Confirmation continued the Poſſeſſion, but transferred no Right.

3dly, This being a new Patronage created by Act of Parliament, not in eſſe before, which appoints a particular Perſon to have the firſt Turn after the next Avoidance; it was objected, That no Body could ſay the King ſhould preſent, when the Act ſaid otherwiſe; and this was therefore a Caſe exempt from the Prerogative: But the Court held that the Act did not interfere with the Prerogative. If an Eſtate Tail is created by Act of Parliament, it is ſubject to ſuch Bars as other Lands intailed are. The Wife ſhall be endowed of a new Eſtate. Vide 8 Co. The Prince's Caſe; à pari ratione a new Rectory ſhall be ſubject to the King's Prerogative.

4thly, It was objected, That this new Church, as to Dr. Tenniſon, was a kind of Donative, he coming in without Inſtitution and Induction, and that the preſentable Parſonage does not commence till after him by the Words of the Statute; and that in Caſe of a Donative, the Promotion of the Incumbent does not make a Ceſſion.

Sed Curia contra: For in Point of Eſtate, the Right of Preſentation commences by the Paſſing of the Act immediately; but in Point of Intereſt, not till the Avoidance. Vide 3 Cro. 323. 10 Co. 107. 4 Mod. 190. Shower 164. 3 Lev. 352. S. C.

Ladd *verſus* Widdows. Mich. 1 Ann. B. R.

(3) Preſentation may deſtroy Impropriation, but not a Donative.

UPON a Motion by Serjeant Selby for a new Trial in a Quare Impedit, wherein the Point in Iſſue was, Whether the Church was Donative or Preſentative? Evidence was pretended of ſeveral Preſentations; and the Court, viz. Holt C. J. and Powell J. held, That tho' a Preſentation might deſtroy an Impropriation, yet it could not deſtroy a Donative, becauſe the Creation thereof was by Letters Patent, whereby Land is ſettled to the Parſon and his Succeſſors, and he to come in by Donation.

Principal and Acceſſary.

Domina Regina *verſus* Naſh. Mich. 1 Ann. B. R.

(1) Who is an Aider and Aſſiſter in Deer-ſtealing within 3 & 4 *W. & M. c.* 10.

UPON a Conviction of Deer-ſtealing by Juſtices of Peace on the late Statute, the Queſtion was, Whether one not preſent, but procuring, adviſing, and abetting, by lending his Gun, Dog, &c. before the Fact, ſhould be ſaid to be aiding and abetting therein? Holt C. J. inclined, 1ſt, That he was not within the Words, not being actually preſent at the Fact, becauſe the Statute is to be conſtrued ſtrictly, for that it takes away the Privilege of a better Trial, viz. per pares. 2dly, Becauſe it adds a farther Penalty to what was an Offence before: He ſaid there might be an aiding and abetting before the Fact, viz. by Advice, &c. or in the Fact by being preſent; or after the Fact, by abetting the Party. Vide Dy. 187. Co. Ent. 56. The other Judges held Aiders in the Fact would be Principals, and then Aiders and Abettors would mean nothing. Quod Holt negavit, ſaying, All that are preſent may be ſaid to be Principals as to an Action of Treſpaſs, but not as to the Penalty of this Statute: And this Diverſity is apparent in other Caſes, for one aiding and aſſiſting upon the Statute of Stabbing, ſhall have his Clergy, whereas a Principal ſhall not; ſo in the Caſe where two went to break a Houſe, one broke it and enter'd, the other ſtood upon the Ladder and received the Goods; he that ſtood upon the Ladder ſhall have his Clergy, and the other ſhall not, being a Principal.

Domina Regina *verſus* Whiſtler. Hill. 1 Ann. B. R.

(2) Where Statute makes an Offence Felony, Acceſſaries (properly) are within it, tho' not named; otherwiſe where it makes a particular Fact more penal.

ROLFE and others were convicted of Deer-ſtealing upon 3 & 4 W. & M. c. 10. and that Whiſtler was illicite & injuſte auxiſians & aſſiſtens præfat. Rolfe, &c. in illicita & injuſta venatione & occiſione Damæ præd. viz. perſuadendo & incitando præfat. Rolfe to kill the ſaid Deer, and lending Dogs to hunt and kill, and Horſes to carry away the ſaid Deer, contra formam Statuti; and whether this was an aiding and aſſiſting within the Statute, was the Queſtion. Powell, Powys and

Gould Juſtices, held that it was; but Holt C. J. contra held, That the Conviction ought to be quaſh'd, for that where a Statute makes that Felony, which was not ſo at Common Law, Aiders and Abettors, according to the Notion of the Common Law, are within the Statute, tho' not expreſſed; but where an Offence at Common Law is only made more penal, Aiders and Abettors are not to be underſtood of ſuch as aid before and after the Fact, but ſuch as are preſent only: Theſe were only Acceſſaries at Common Law, and are not within the Act. Vide 1 Cro. 474. Dal. 11, 22. Poſtea in the ſame Caſe, Holt C. J. ſaid, he held the ſame Diverſity with this farther, that this is to be underſtood when an Offence at Common Law is made more penal by a particular Deſcription of the Fact, and not under a general Denomination of the Crime; as if this Statute had enacted theſe Penalties on them, as Treſpaſſers, as 'tis done by the Statute de malefactoribus in parcis. Vide 1 And. 116. Hale 51, 216.

Privilege of Perſons.

Kirkham *verſus* Wheely. Trin. 7 Will. III. B. R.

(1) Plea to the Juriſdiction in the Negative is well enough.

TO an Action qui tam, the Defendant pleaded that he was an Attorney of the Court of Common Pleas, and that Attorneys de C. B. were not ſuable elſewhere: To this the Plaintiff demurred, 1ſt, Becauſe the Plea is only in the Negative, and no Juriſdiction is given to any other Court. 2dly, Becauſe there is no Defence by Venit but Dicit only. Per Cur'. As to the Plea being in the Negative it is well enough; for the Privilege is not traverſable and triable per Pais, but a Matter of Law of which we take Notice; and venit & dicit is a ſufficient Defence in this Caſe. 14 H. 6. 14, 19.

Venit & dicit, or *dicit* only, is well in Plea to the Juriſdiction.

Stephens

Stephens *verſus* Arthur. Eodem termino.

(2) THE Defendant pleaded to the Juriſdiction thus, viz. Et idem Arthurus in propria Perſona ſua dicit, That he is a Clerk to a Prothonotary of the Common Pleas; and it was objected that he did not ſay, venit & dicit. Et per Cur'. Venit is no part of the Plea, but dicit begins the Plea; dicit alone ſhews him to be in Court, and here it appears he is in Cuſtodia.

Lane *verſus* Saltmarſh. Hill. 8 Will. III. B. R.

(3) AN Attorney de C. B. being ſued by Bill in B. R. Buxton moved he might be diſcharged: Denied per Cur'. For let him plead his Privilege.

Brown's *Caſe*. Hill. 9 Will. III. B. R.

(4) A Philizer de B. R. was arreſted per breve, but diſcharged on common Bail; for he ought to be ſued by Bill, as præſens in Curia. Per Cur. abſente Holt C. J.

Branthwait *verſus* Blackerby, *& al'*. Hill. 9 Will. III. B. R.

(5) For a joint Cauſe of Action againſt an Attorney with another Man, both muſt be arreſted.

IF a Man hath a joint Cauſe of Action againſt two, one an Attorney, and the other not, he muſt arreſt both, and declare againſt them as in Cuſtody. A Bill cannot be filed againſt a Perſon privileged in Vacation, for then he is not preſent in Court; and as to the Vacation, it begins the laſt Day of the Term, as ſoon as the Court riſes. (Vide 2 Lev. 129. 1 Ven. 298.)

Note, The Bill muſt be filed, tho' the Attorney agrees to appear and diſpence with it, but it may in ſuch Caſe be filed afterwards. Paſ. 9 W. 3. B. R. Roberts's Caſe.

Anonymus. Hill. 2 Ann. B. R.

(6) H. Came to confeſs an Indictment, and the Court held, that he had no Privilege, eundo & redeundo; becauſe there was no Proceſs againſt him.

Dillon *verſus* Harper. Trin. 2 Ann. B. R. Ante 328.

(7) Where Privilege of an Attorney is pleaded with a Writ, his being an Attorney cannot be denied; otherwiſe if without.

AN Attorney de C. B. being ſued in B. R. pleaded his Privilege, to which it was demurred ſpecially, for not concluding his Plea with a Profert of a Writ of Privilege, teſtifying his being an Attorney, &c. Et per Holt C. J. The Difference is, if Privilege of an Attorney be pleaded with a Writ, the Defendant cannot be denied to be an Attorney; if without, he may, and then a Certiorari ſhall be awarded to certify whether he be an Attorney, or not.

Scawen *verſus* Garrett.

(8) Plea of Privilege of an Attorney of C B. need not ſhew the Writ under Seal, nor a *Venue*, nor where the C. B. ſits.

TO an Action in B. R. the Defendant pleaded, That he was an Attorney of the Common Pleas: On Demurrer Mr. Ward objected, That he ought to produce his Writ, and conclude with a prout patet per Recordum; and alſo that he laid no Venue, alledging no Place where he was Attorney, nor where the Court of Common Pleas ſits. Et per Cur'. viz. Holt C. J. to which the reſt aſſented. An Attorney may plead Privilege with a Profert of his Writ, if he will; or with an Exemplification of the Record of his Admiſſion; or he may plead it as he does here, and it is well enough, for ſo are the Precedents, and the Plaintiff may reply nul tiel record. Vide 1 Brown. 2. Thom. 4. Cliff. 570. Brevia judicialia 169, 172. Cited per Broderick. 2dly, There was no Need of a Venue to try where he was Attorney, for it being a Matter concerning his Perſon, was triable where the Writ is brought; ſo in Treſpaſs, if the Defendant pleads Son villain regardant, and the Plaintiff replies Frank-home, it muſt be tried where the Writ is brought. As to the 3d, he wondered how that ever came to be allowed; for that this Court ſend Writs to the Chief Juſtice of the Common Pleas by that Name; And unleſs where this is held to be part of the Deſcription of a Record, it can never be neceſſary.

Pri-

Privilege of Place.

Privilege of the Exchequer.

PER Walter Chief Baron, The Cauſes of Privilege in the Exchequer are, 1ſt, If one be Informer for the King. 2dly, If one be accountant to the King. 3dly, If one be Debtor to the King. 4thly, Where one is an Officer of the Court, or attends an Officer of the Court. Always where the Plaintiff is privileged, the Suit is by Quo minus; where the Defendant is privileged, the Suit is by Bill. 31 H. 6. 10. 22 H. 6. 19. b.

Superſedeas to a Suit in the Exchequer, *dummodo non tangit nos.*

A Writ was delivered to the Barons of the Exchequer in open Court, commanding them to ſtay a Suit between Wilſon and Rookes, by dummodo non tangit nos vel, &c. and the Writ was diſallowed, for that the Defendant might have pleaded that Matter to the Juriſdiction of the Court: It was admitted, That there is ſuch a Writ in the Regiſter, but there are ſeveral Writs there which no Uſage or Precedent does warrant, of which this is one. Et per Walter Chief Baron, Where one entitled to the Privilege of this Court, is ſued in C. B. this Court ſends a Superſedeas; but if it be in B. R. they do not ſend a Superſedeas, for that would be to ſuperſede the King; but the Practice is, to ſend up the Writ-Book by the puiſne Baron, and demand Privilege. Trin. 3 Car. In Scac'.

Prohibition and Conſultation.

Shotter *verſus* Friend. Hill. 1 W. & M. B. R. Rot. 39.

AN Executor being ſued for a Legacy in the Spiritual Court, pleaded Payment, and offered to prove it by one Witneſs, which the Judge refuſed, and gave Sentence againſt him. Upon this Matter ſuggeſted, a Prohibition was moved for. Et per Cur'. 1ſt, Where the Eccleſiaſtical Court proceed in a Matter merely Spiritual, if they proceed in their own Manner, tho' that is different from the Common Law, no Prohibition lies; as in Probate of Wills; there, if they refuſe one Witneſs no Prohibition lies. Noy 12. 2 Ro. 300. 2dly, Where they have Conuzance of the original Matter, and an Incident happens which is of temporal Conuzance, or triable by the Common Law, they ſhall try the Incident, but muſt try it as the Common Law would: Thus in a Suit for Tithes or for a Legacy, if the Defendant pleads a Releaſe or Payment, or in a Suit to prove a Will, if the Defendant plead a Revocation. 1 Ro. Rep. 12. 2 Ro. Rep. 42. Yelv. 92. So in the Caſe at Bar, they ſhall try the Matter of Payment or no Payment, but then they muſt admit ſuch Proof as the Common Law would, or otherwiſe they reject the Cauſe themſelves, and ought to be prohibited. 3dly, A bare Suggeſtion, That the Defendant has but one Witneſs, and that they take Exceptions to his Credit and Reputation, is no Cauſe of Prohibition; for if they admit the Proof of one Witneſs, whether he be a credible Witneſs, or not, they ſhall judge, and the Party has no Remedy but by Appeal. 4thly, That it is not too late to come for a Prohibition after Sentence; for the Sentence in this Caſe is the Grievance. Conſultation denied.

(1) Prohibition to a Suit for a Legacy, for refuſing Proof of Payment by one Witneſs.

Otherwiſe in Probate of Wills.

Temporal Incident muſt be tried according to Rule of the Common Law.

Inter Starky *and the Church-wardens of* Watlington *in* Suſſex. Trin. 4 W. & M. B. R.

SUIT in the Spiritual Court for taking away two Bells out of the Steeple, and a Prohibition was granted, for the Church-warden is a Corporation, and the Property is in him, and he may bring Trover at Common Law.

(2) Prohibition to ſtay a Suit in the Spiritual Court for taking Bells.

Wharton *verſus* Pitts. Trin. 4 W. & M. B. R.

(3) Prohibition to the Admiralty denied, unleſs the Defendant would appear and give Bail.

A Suit was in the Admiralty againſt the Maſter and Ship which lay in the Thames, for heedleſly running over another Ship, and the Defendant there moved for a Prohibition: The Plaintiff informed the Court, that the Defendant would not appear, ſo that he could have no Remedy at Law, upon which the Court refuſed a Prohibition, unleſs the Defendant would appear and give Bail.

Harris *verſus* Hicks. Hill. 4 & 5 W. & M. B. R.

(4) Prohibition *quoad* annulling Marriage and baſtardizing Iſſue.

PROHIBITION was moved for to the Eccleſiaſtical Court of Coventry, where a Suit was againſt the Plaintiff for Inceſt, in marrying his firſt Wife's Siſter, ſuggeſting that the ſaid ſecond Wife was dead, and by his ſaid Wife he had a Son, to whom an Eſtate was deſcended as Heir to his Mother, and that notwithſtanding that he had pleaded this Matter, they went on to annul the Marriage and baſtardize the Iſſue. Et per Cur'. A Prohibition ſhall go as to annulling the Marriage or baſtardizing the Iſſue, but they may proceed to puniſh the Inceſt.

Hawkins's *Caſe*. Hill. 8 Will. III. B. R.

(5) Prohibition to a Suit for calling H. Knave.

H. Libelled in the Spiritual Court for calling him a Knave, a Knave, and a Knave indeed; and a Prohibition was granted, becauſe nothing was ſaid that could make him liable to Eccleſiaſtical Cenſure. The Statute de circumſpecte agatis mentions only ſuch Defamations as are puniſhable in the Spiritual Court; and for ſuch as the Spiritual Court cannot puniſh, the Party ſhall not be liable there: The Reaſon why the laying violent Hands upon a Clergyman was there ſuable, was, becauſe the Clerk having habitum & tonſuram, which made him known, 'twas an Affront to the whole Order.

Gardner *verſus* Booth. Trin. 10 Will. III. B. R.

(6) Prohibition may be granted after Sentence where Cauſe is not of ſpiritual Conuſance; otherwiſe for citing out of the Dioceſe.

WHERE it doth appear in the Libel, or by the Proceedings in the Cauſe, that the Conuzance of the Cauſe does not belong to the Spiritual Court, a Prohibition may be moved for and granted after Sentence; and this holds in all Caſes but where one is ſued out of his Dioceſe, for there, if he doth not take Advantage of it before Sentence, he ſhall not have

a Prohibition after Sentence; ratio eſt, becauſe the Cauſe doth belong to the Spiritual Court; and tho' it doth not belong to that Spiritual Court, it belongs to ſome other, and not to the King's Temporal Court.

Biſhop of St. David's *Caſe.* Paſ. 11 Will. III. B. R. Vide *this Caſe, Title* Biſhops, Archbiſhops, &c. *Part* 1. *pag.* 134. (7)

Godfrey *verſus* Llewellin. Trin. 11 Will. III. B. R.

(8) Where Matter of the Suggeſtion does not appear on Libel, Affidavit is neceſſary.

WHERE the Matter ſuggeſted for a Prohibition appears upon the Face of the Libel, we never inſiſt upon an Affidavit; but unleſs it appear upon the Face of the Libel, or if you move for a Prohibition as to more than appears on the Face of the Libel to be out of their Jurisdiction, you ought to have Affidavit of the Truth of your Suggeſtion. Per Holt C. J. & poſtea, Trin. 12 W. 3. B. R. Vide 2 Co. 45.

Machin *verſus* Maultin. Mich. 11 Will. III. B. R.

(9) H. ſubtracts Tithes in one Dioceſe and removes into another. Afterwards being found in the firſt, is there cited and ſued, and a Conſultation awarded.

Subſtraction of Tithes local.

IN a Declaration in Attachment ſur Prohibition. the Caſe was, That the Plaintiff lived in Nottingham within the Province of York, and there ſubtracted Tithes, and then removed into Lincolnſhire within the Province of Canterbury: Afterwards he happened to go to York, and was ſued there in the Court of the Archbiſhop, for the Subſtraction aforeſaid, and had a Prohibition on 32 H. 8. c. 9. for citing him out of his Dioceſe. But at laſt, after debate, a Conſultation was awarded; for that the Subſtraction of Tithes is local, and muſt be ſued before the Ordinary of that Place where the Wrong was done; otherwiſe in Caſes tranſitory, ubi forum ſequitur reum: And as it was argued by the Counſel, this is not citing out of his Dioceſe within the Statute, becauſe the Dioceſe where he lives has not a Juriſdiction; and if he might not be cited in this Caſe, the Thing would be remedileſs and diſpuniſhable. Vide Godb. 191. 1 Ro. Rep. 328. 1 Cro. 97. 13 Co. 4. Winch 570. 2 Ro. Rep. 448. 3 Mod. 211. 2 Brownl. 12, 28.

Jones *verſus* Stone. Trin. 12 Will. III. B. R.

(10) Suit in the Eccleſiaſtical Court againſt the Vicar of S. for not performing Divine Service in the Chapel of C. as bound by Cuſtom. Prohibition denied.

DAVID JONES, the Vicar of N. was libelled againſt in the Spiritual Court, for that by Cuſtom Time out of Mind, the Vicars of S. had by themſelves, or others, ſaid and performed Divine Service in the Chapel of Chawbury, for which there was ſuch a Recompence, and that he neglected. The Defendant came for a Prohibition, and without traverſing this Cuſtom, ſuggeſted that all Cuſtoms were triable at Common Law: And Mr. Harcourt urged, That it was enough for a Prohibition, that a Cuſtom appeared to charge the Vicar with a Duty for which he was not liable of common Right. Et per Holt C. J. A Parſon may be bound to an Eccleſiaſtical Duty by Cuſtom, and when he is bound by Cuſtom, the Spiritual Court may puniſh him if he neglects that Duty; the Cuſtom might have a reaſonable Commencement by Compoſition in the Spiritual Court, and begin by an Eccleſiaſtical Act: And a bare Preſcription only is not a ſufficient Ground for a Prohibition, unleſs it concerns a Layman; whereas here it is an Eccleſiaſtical Right, an Eccleſiaſtical Perſon and an Eccleſiaſtical Duty, and the Preſcription not denied; notwithſtanding 2 Inſt. 491, I never could get a Prohibition to ſtay a Suit in the Spiritual Court againſt a Parſon for a Penſion by Preſcription. Vide 1 Vent. 3, 120, 265.

Sir Baſil Firebraſs's *Caſe*.

(11) Prohibition granted to a Suit in Equity for diſcovery of Matters to make the Defendant forfeit his Freehold.

HE Was chief Ranger of Enfield-Chaſe, and now a Bill was exhibited againſt him in the Chancery of the Dutchy, for a Diſcovery of what Deer he had killed, and what Timber, Wood, &c. he had felled and cut down, and by what Warrant, and to ſhew Cauſe why his Patent ſhould not be repealed. And to this Suit a Prohibition was granted niſi; for he ſhall not be obliged to anſwer upon his Oath, what is to make him forfeit his Place, but it ought to be proved againſt him.

Earle *verſus* Paine. Mich. 12 Will. III. B. R.

(12) Treſpaſs in B. R. for taking Wines ſtaid by Order of Exchequer, an Information of Seiſure depending there.

PAINE, a Cuſtom-houſe Officer exhibited an Information of Seizure of a Hogſhead of Wine belonging to Mr. Earle, and ſeized for not paying Cuſtom. Earle neglected to come in and enter his Claim in the Exchequer, but in the mean Time brought Treſpaſs in B. R. againſt Paine. Upon Motion the Barons ordered the Proceedings in the King's Bench ſhould be ſtay-

ed, and the Cauſe there removed into the Exchequer in the ſame State and Forwardneſs: Earle was ſerved with the Order, but notwithſtanding gave Rules for pleading, whereupon an Attachment was iſſued by the Exchequer againſt him; whereupon he moved here for a Prohibition to the Court of Exchequer. And a Rule was made to hear Counſel; on the Argument ſeveral Precedents were cited, one in 19 H. 7. Rot. 16. exactly like this. The Court took Time to conſider of the Precedents, and in the mean Time the Matter was compounded. Vide Reg. 187. 2 Inſt. 551.

Anonymus. Hill. 12 Will. III. B. R.

(13) Prohibition ſhall not go for a *Modus* or other foreign Matter, unleſs it be pleaded below.

IN the Biſhop of Wincheſter's Caſe, 2 Co. 45. It is held, That in a Suit for Tithes in the Spiritual Court, H. may have a Prohibition, ſuggeſting a Preſcription or Modus, before or without pleading. But this ſeems not to be Law, for 12 W. 3. B. R. a Prohibition was moved for, ſuggeſting a Cuſtom, &c. Et per Holt C. J. and the Court it was denied, unleſs they pleaded it below, becauſe perhaps they might admit the Plea. Alſo 10 W. 3. B. R. it was ſaid by Holt C. J. That if a Modus be pleaded in the Spiritual Court and admitted, no Prohibition ſhall go; but if the Queſtion be, whether a Modus or no Modus, a Prohibition ſhall go, and ſo is the Law, viz. Where-ever the Matter which you ſuggeſt for a Prohibition is foreign to the Libel, you muſt plead it below, before you can have a Prohibition; otherwiſe where the Cauſe of Prohibition appears on the Face of the Libel.

Jacob *verſus* Dallow. Paſ. 1 Ann. B. R.

(14) H. having a preſcriptive Right to a Seat in a Church, and being diſturbed, may ſue in the Spiritual Court to have his Poſſeſſion quieted.

THE Plaintiff declared in a Prohibition, ſetting forth a preſcriptive Right in the Plaintiff, and thoſe whoſe Eſtate he had, &c. to a Seat in the Church, and that the Defendant ſurmiſing a Uſage Time out of Mind, had libelled againſt him in the Spiritual Court, for diſturbing him in ſitting there; and ſhews that he had denied the Uſage in the Spiritual Court, and the Judge had refuſed to allow his Plea: The Defendant traverſed the Plaintiff's Preſcription and pleaded his own Uſage; upon which there was a Demurrer: Mr. Eyre urged, That tho' the Plaintiff had by his Demurrer confeſſed his Preſcription to be falſe, and by Conſequence that he had no Right to the Seat; yet the Defendant grounding his Libel below upon a Cuſtom which is not triable there, he could not have a Conſultation. Vide Hetl. 94. Noy 78. 2 Jo. 3. Holt C. J. held, That if the Plaintiff had not a Title by Preſcription, he ought not to diſturb

ſturb the Poſſeſſion of the Defendant; and the Ordinary hath Conuſance of ſuch Diſturbance, and may ſettle it according to Uſage and Poſſeſſion, unleſs there be a temporal preſcriptive Title hurt by their Sentence; and the Defendant might well ſue in the Eccleſiaſtical Court to have his Poſſeſſion quieted, and might admit his Preſcription to be tried there, as a Defendant does a Modus or a Penſion by Preſcription.

Galizard *verſus* Rigault. Mich. 1 Ann. B. R.

(15) Prohibition to a Suit againſt H. for Solicitation of Chaſtity; H. having been convicted on Indictment for Aſſault with Intent to raviſh.

INDICTMENT was for aſſaulting, beating, wounding, and indeavouring to raviſh the Wife of B. upon which the Party was convicted, and afterwards the Husband brought an Action of Treſpaſs for the ſame Cauſe; and now the Party being alſo libelled againſt in the Spiritual Court for the ſame Fact, viz. for ſolliciting her Chaſtity, moved for a Prohibition to the Proceedings in the Spiritual Court; and it was urged for the Juriſdiction of the Spiritual Court, That they may puniſh for the Solicitation and Incontinence, and that this Suit was pro ſalute animæ, the other for Fine and Damages. Sed per Cur', a Prohibition was granted; for it being an Attempt and Solicitation to Incontinence, coupled with Force and Violence, it does by reaſon of the Force, which is temporal, become a temporal Crime in toto; as if one ſay, Thou art a Whore and a Thief, or thou keepeſt a Bawdy-houſe, which are temporal Matters, the Party ſhall not proceed in the Spiritual Court; whereas, if it were only, Thou art a Whore, a Libel lies in the Spiritual Court. So if it be ſaid of a Woman that ſhe is a Bawd only, and not that ſhe keeps a Bawdy-houſe. But per Holt C. J. If one commit Adultery, and the Husband bring Aſſault and Battery, this ſhall not hinder the Spiritual Court, for 'tis a criminal Proceeding there, and no Indictment lies at Common Law for Adultery. 1 Roll. Abr. 295. 2 Inſt. 488.

Partridge's *Caſe*. Mich. 1 Ann. B. R.

(16) Prohibition to Probate of Will of Lands and Goods, upon Suggeſtion of *Non Compos*, denied.

A Prohibition was pray'd to the Spiritual Court to ſtay the Probate of a Will, which contained a Deviſe of Lands and ſeveral Legacies, ſuggeſting this Matter, and that the Teſtator was Non compos; and the Marquiſs of Wincheſter's Caſe, 6 Co. 23. was relied upon: But the Court denied that Caſe, and ſaid, that the Stat. of H. 8. never intended to leſſen the Juriſdiction of the Eccleſiaſtical Court as to the Probate of Wills. And to grant a Prohibition might be inconvenient, for without Probate the Executor cannot ſue for Debts, which by this

Means may be loſt, and the Will unperform'd. As for granting it quoad the Land, it would be vain (Vide 2 Ro. 315. 1 Sid. 141. this was the Practice heretofore) becauſe it is no Evidence either pro or con in any Court of Law, but a Proceeding coram non judice; yet it is good as to the Goods.

Matthews *verſus* Burdett. Hill. 1 Ann. B. R. Vide *this Caſe, Title* Univerſities *and* Schools. (17)

Chambers *verſus Sir* John Jennings. Hill. 1 Ann. B. R.

(18) Prohibition to the Court of Honour.

A Suit by Libel was in the Court of Honour for theſe Words, viz. You a Knight; You a pitiful inconſiderable Fellow. And a Rule was made to ſhew Cauſe why there ſhould not be a Prohibition: Againſt which it was urged, That there would be no Remedy in this Caſe, if this was not allow'd: Holt C. J. doubted whether there was or could be any ſuch Court; but ſaid a Prohibition would lie to a pretended Court; and after no one Precedent could be found of ſuch a Suit for Words in the Court of Honour, the Prohibition went abſolutely.

Anonymus. Mich. 2 Ann. B. R.

(19) Prohibition lies to the Spiritual Court in any Suit for denying a Copy of the Libel, but not to Admiralty.

PROHIBITION lies for denying a Copy of the Libel to any Eccleſiaſtical Court; Nam jura Eccleſiaſtica ſunt limitata; and the Party ought to know whether the Matter be within their Juriſdiction, and how to anſwer. 1 Ro. Rep. 337. Dighton's Caſe. Et Mich. 2 Ann. B. R. 'Twas ſaid by Holt C. J. That it was formerly held by all the Judges of England, that when there was a Proceeding ex officio in the Eccleſiaſtical Court, they were not bound to give the Party a Copy of the Articles, but the Law is otherwiſe; for in ſuch Caſe, if they refuſe to give a Copy of the Articles, a Prohibition ſhall go quouſque it be given, and accordingly a Prohibition was granted per Cur'. Nota tamen Paſ. 11 W. 3. B. 3. Hall moved for a Prohibition to the Admiralty for refuſing a Copy of the Libel, and it was denied per Holt C. J. Quia n'eſt deins le Stat.

Foy

Foy *verſus* Liſter. Trin. 4 Ann. B. R.

(20) Suggeſtion in Caſe of Tithes muſt be prov'd within ſix Kalendar Months from *Teſte* of Prohibition.

ON a Modus ſuggeſted to pay every tenth Day's Milk, from April to November, ſkimmed and then made into Cheeſe, in lieu of all Tithe of Milk, a Prohibition was granted to try the Modus, and ſettle the Matter; and upon ſpeaking to the Goodneſs of the Modus, theſe Caſes were cited. 3 Cro. 609. Mo. 909. Latch 226. 1 Ro. 649. N. 17. 648, 649. At laſt Mr. Eyre came and ſhewed, That the Prohibition was teſted the 29th Day of November, and that ſix Months, i. e. Kalendar Months (as they ought to be. Noy 30. Hob. 179. Litt. Rep. 19.) were expired the 25th Day of May laſt, and therefore he moved for a Conſultation, becauſe in all that Time they had not proved their Suggeſtion; and had it upon the Statute 2 E. 6. And the Court agreed, That the Statute extends to Suits for ſmall as well as great Tithes, and that the ſix Months are to be computed from the Teſte of the Writ; and the Caſe in Mo. 573. wherein it is ſaid there muſt be ſix Months in Term-time, was denied. For proving Suggeſtions. Vide Co. Ent. 462, 463. 4. Conſultations for not proving them. Vide Aſht. 444. Theſ. Brev. 80. Note, The Entry in Aſhton is ill in the Award of the Coſts, for there ought to be a Judgment. Yelv. 119. 1 Brownl. 98.

PROOF.

Bredon *verſus* Gill. Mich. 8 Will. III. B. R.

Commiſſioners of Appeals cannot proceed upon the Depoſitions taken before Commiſſioners of Exciſe, but muſt examine the Witneſſes *de novo*, unleſs dead.

ON an Appeal from the Commiſſioners of Exciſe to the Commiſſioners of Appeals, according to 12 Car. 2. c. 23. the Queſtion was, Whether the Depoſitions of the Witneſſes and their Examination written down by the Clerk of the Commiſſioners of Exciſe, ſhould be allowed to be read in Evidence on this Appeal? or whether the Witneſſes ſhould not be brought in again perſonally, and be examined vivâ voce? The Commiſſioners of Appeals thought the Depoſitions ſufficient, and proceeded thereupon, and a Prohibition was moved for, but denied at firſt, becauſe this had been the Courſe ever ſince the Statute, and it was a ſummary Proceeding: That it would occaſion Trouble and Delay to the Revenue to bring in all the Witneſſes again; and it was but proper the Commiſſioners of Appeals ſhould have juſt the ſame Evidence the firſt Commiſſioners had: So it is in an Attaint, and the Law does not make vivâ voce Evidence neceſſary, unleſs before a Jury. In other Caſes Depoſitions may be Evidence: If it were not ſo in this Caſe, they would be to try the Matter de novo, inſtead of trying an Appeal. Sed poſtea Paſ. 9 W. 3. B. R. mutata opinione, the Court held that the Commiſſioners of Appeal ought to examine the Witneſſes de novo on the Appeal, that it was the Intent of the Act, and the Commiſſioners had a Power given for that purpoſe, to adminiſter Oaths: That this was juſt, becauſe the firſt Sentence might be by Default, or the Depoſitions might miſrepreſent, or not repreſent the whole Caſe; and that on Appeals upon Orders of Juſtices, Examination is always de novo. And a Prohibition was granted; but Holt C. J. ſaid, his private Opinion was, That if the Witneſſes were dead they might uſe their Depoſitions.

PROPERTY.

Sutton *verſus* Moody. Mich. 9 Will. III. B. R.

H. has the Property of Things *feræ Naturæ*, kill'd in his own Ground.

THE Plaintiff brought Treſpaſs for breaking his Cloſe and hunting there, & Centum cuniculos ſuos adtunc & ibidem invent. occidit, cepit & aſportavit; Verdict was for the Plaintiff, and entire Damages: And it was objected in Arreſt of Judgment, That H. cannot have a Property in Conies which are feræ naturæ, unleſs on a ſpecial Account; as if he has a Warren of them, then he may ſay Quare Warrenam ſuam fregit & cuniculos ſuos cepit. Vide 1 Cro. 553. F. N. B. 87. Reg. 93. b. 1 Brownl. 167. Curia contra; for a Warren is but a Franchiſe to keep them; and notwithſtanding that, the Owner has no more Property in the Conies themſelves than any Man that has them in his own Land; if H. ſtarts a Hare in my Cloſe, and kills her there, 'tis my Hare; otherwiſe if he hunts her into the Ground of a third Perſon, then 'tis the Hunter's. Judgment pro Quer'.

Quantum Meruit.

Snow *verſus* Firebraſs. Mich. 12 Will. III. B. R.

(1) *Quantum meruit* for Meat, Drink, &c. uncertain as to Time, well.

THE Plaintiff declared, That the Defendant in Conſideration that the Plaintiff had found him ſufficient Meat, Drink, Waſhing and Lodging, pro diverſis menſibus ultimo præteritis, promiſed to pay him as much as he ſhould deſerve, and averred that he deſerved ſo much: Upon Non Aſſumpſit pleaded, and Verdict for the Plaintiff, it was moved in Arreſt of Judgment, that the Declaration was ſhort and incertain as to the Time or Number of Months: Sed per Holt C. J. The Incertainty as to the length of Time, or Number of Months, can do no more harm than Incertainty as to the Things, which has been often adjudged not to viciate. It is enough to aver how much he deſerved. Judgment pro quer'.

Glover *verſus* Rogers. Paſ. 4 Ann. B. R.

(2) *Quantum* omitted, but held well.

PLAINTIFF declared that the Defendant, in conſideration that the Plaintiff's Teſtator had tranſported for him ſuch and ſuch Merchandizes, promiſed to pay the Plaintiff's Teſtator, tantas denar. ſummas pro tranſportatione Merchandiz. prædict. rationabiliter habere meruiſſet, and avers that he deſerved ſo much. Upon Non Aſſumpſit, Verdict was for the Plaintiff, and Judgment in C. B. and now a Writ of Error was brought thereupon in B. R. and objected that the Word Quantum was wanting, and it is not ſaid who had deſerved, and he avers he deſerved ſo much for Tranſportation of Merchandizes. But the Court affirmed the Judgment: Tantum is enough, viz. The Defendant promiſed him to pay him ſo much he deſerved; and meruiſſet ſignifies as much as ipſe meruiſſet, and there being but two Perſons in the Record it could be no Body but the Tranſporter, and they muſt have been the ſame Merchandize for which the Promiſe was made, or otherwiſe the Plaintiff could not have had a Verdict, which has cured the Want of Prædict'.

Moverley *verſus* Ley. Hill. 4 Ann. B. R.

(3) To be taken according to the Intent of the Parties.

ASSUMPSIT, and declares quod cum the Defendant, in conſideration that the Plaintiff would provide him Meat and Drink, promiſed to pay him as much as the Plaintiff habere meruit, and avers that he deſerved ſo much: There were alſo other Counts. Non Aſſumpſit was pleaded and Verdict for the Plaintiff, and intire Damages: Upon Motion in Arreſt of Judgment it was objected, that meruit ſhould have been meruerit. The Court held at firſt, That this was not Falſe Latin, but Falſe Senſe, which is not cured by a Verdict, and tho' a Dash would help it, yet they could not by Intendment ſupply a Dash, for that was to make another Word. This was moved ſeveral Times, and having reſted two Terms, the Court gave Judgment for the Plaintiff, ſaying, they muſt take the Words of the Declaration to be the very Words of the Promiſe; as if the Words of the Promiſe had been put in writing thus, by the Parties under their Hands, in which Caſe the Court ought not to purſue a grammatical Senſe or Conſtruction, which makes the Promiſe void; but to conſtrue it ſo as to make the Parties mean ſomewhat, as it's plain they did, and that was to pay tantum quantum habere meruerit.

Quare Impedit.

[*Vide Title* Preſentation.]

Berkeley *verſus* Hanſard. Mich. 3 W. & M. B. R. Rot. 569.

IN a Quare Impedit againſt A. and B. and the Biſhop. A. and B. made Title, and the Biſhop pleaded that he claimed nothing but as Ordinary. The Biſhop died, A. came and ſurmiſed this upon the Roll, and prayed the Plaintiff might reply; upon this an Entry was made, Quod prædict. quer. licet ſolemniter exactus non venit, nec eſt proſecutus breve ſuum præd. ideo conſideratum eſt, &c. & breve Epiſcopo. Upon this a Writ of Error was brought, and the Judgment was affirmed; for it is a Nonſuit after Appearance, which in a Quare Impedit is peremptory. Vide 7 Co. 27. b. 2 H. 4. 1. b. 14 H. 7. 19. b.

(1) In *Quare Impedit* Nonſuit after Appearance is peremptory.

Dominus Rex & Domina Regina *verſus The Biſhop of* London *and Dr.* Lancaſter. Trin. 5 W. & M. B. R.

IN the great Caſe of the Quare Impedit for the Church of St. Martin's in the Fields, the Defendant pray'd Oyer of the Writ, and pleaded in Abatement Variance between the Writ and the Count; the firſt being Quæ ad noſtram donationem ſpectat, the later Quæ ad ſuam donationem ſpectat jure Prerogativæ. And on Demurrer it was objected, that the Title by the Writ is a Title in Fee, this in the Count is only a Turn pro hâc vice; ſed non allocatur; for the Precedents are ſo, and the Writ is always general. Shower pro def'. Suppoſe then the King ſhould have Judgment by Default and a Writ to the Biſhop, would this gain a general Title to the Crown and become a Uſurpation? Holt C. J. No; for where the King hath Judgment by Default in a Quare Impedit, he as well as a Subject, muſt by Suggeſtion on the Roll ſet forth his ſpecial Title. Reſpondeas ouſter awarded.

(2) In Caſe of a prerogative Turn the Writ is general, *quæ ad noſtram ſpectat donationem.*

Dominus

Dominus Rex *verſus The Biſhop of* Cheſter, Pierce, *and* Cook. Hill. 9 Will. III. B. R.

(3) IN a Quare Impedit the Plaintiff declared, That Q. Elizabeth, on the 14th Day of February, in the 12th Year of her Reign, was ſeiſed of the Advowſon of Bedel, ut de uno groſſo, and preſented Syms: That the Queen died, and it deſcended to K. James, and he was ſeiſed ut de groſſo: So to K. Charles, and that he was ſeiſed ut de groſſo, and preſented Wickham, and that afterwards Wickham died, and one J. Peirce non habens jus ſed uſurpando præſentavit Metcalfe: That K. Charles I. died ſeiſed, and it deſcended to K. Charles II. &c.

Defendant pleads that K. Charles I. was ſeiſed in groſs; but that he after his Preſentation of Wickham, by Letters Patent granted the Advowſon aforeſaid to one Thackſton, adtunc Armigero, poſtea Militi.

Et quod prædicto tempore quo Peirce is ſuppoſed to have uſurped ſuper Dominum Regem, ipſe idem Peirce uſurpavit ſuper dict. W. Thackſton, and preſented Metcalf. Et quod poſtea the ſaid Thackſton releaſed the Advowſon and his Right therein, to him the ſaid J. Peirce and his Heirs, and traverſes the dying ſeiſed of K. Charles I.

The Attorney-General prayed Oyer of the Letters Patent, which, reciting that Q. Elizabeth, in the 13th Year of her Reign, granted the Manor of Bedel with the Advowſon adinde ſpectan. to the Earl of Warwick, and that the ſaid Manor was come to Sir W. Thackſton Knight, Sciatis igitur nos dediſſe & conceſſiſſe præfato Will'o Thackſton mil. advocationem Eccleſiæ prædict', and thereupon demurred to the Plea. Judgment was given in C. B. for the King, and a Writ of Error brought; and thereupon it was objected, That the Advowſon which the King meant to paſs, was an Advowſon which Q. Elizabeth granted to the Earl of Warwick, and that the ſaid Grant to the Earl of Warwick was void; for the Queen, Anno 12 Regni ſui, being ſeiſed of this Advowſon ut de groſſo, could not Anno 13. grant this as an Advowſon appendant, and that this is admitted by the Defendant: And if this was an Advowſon in groſs, and ſo deſcended to Charles I. his Confirmation or Grant to Thackſton upon a Suppoſal wherein he was deceived, will be void; and that the ſaid W. Thackſton in the Letters Patent, and the W. Thackſton in the Grant, appear to be different Perſons: On the other Side it was urged, That the Queen might be ſeiſed of this Advowſon as in groſs at the Time ſhe preſented, and at the Time ſhe died, and yet might be ſeiſed of it as appendant when ſhe granted it to the Earl of Warwick, for ſhe might have the Advowſon again after

the Grant to the Earl of Warwick, and then present; and that the Court ought to intend every Thing to make the King's Grant good. To clear this the Chief Justice, Rokeby and Eyre Justices held,

1st, That the Time of the Seisin laid in the Count was immaterially alledged; for 'tis sufficient to say tempore pacis, tempore Dominæ Reginæ, and therefore 'tis not traversable: In Trespass quare, &c. it is necessary to lay a certain Time; yet even there the precise Time is not material nor traversable, but any Time before the suing of the Writ may be given in Evidence; à fortiori here, &c.

Sufficient to lay Seisin *tempore pacis, tempore Domini Regis.*

2dly, That which is not material nor traversable is not admitted nor confessed when it is alledged, and not traversed: Ergo, as the Plaintiff upon non present. modo & forma, might give in Evidence a Presentation any Time, so the Court may intend it. Vide 1 Inst. 352. Hob. 71. 2 Leon. 99.

That which is immaterial is not admited by not being traversed.

3dly, The Grant of the Queen, as recited, is said to be inter alia, so there may be other Words which are sufficient to pass an Advowson in gross to the Earl, and the Intent of K. Charles I. is plain, and this Consideration might be sufficient; as the relinquishing of a Suit against the King, or the Surrender of a void Patent is a good Consideration for a new Grant: And as to the Recitals, which were not all answered, Holt C. J. said, Where it appears by the Recitals, the King intended not to pass any Thing he had an apparent Right in, but only what was concealed, the Recital will qualify the Grant; which is Legat's Case. 10 Co. But where there are Words in the Grant, which shew the King designed to pass the Land, tho' they were not concealed, there the Grant shall be good to pass the Lands. Hard. 231.

In Grants where the King's Intent appears to pass the Thing, it shall pass notwithstanding false Recitals.

4thly, Holt C. J. Turton and Eyre Justices held, That William Thackston Esq; in the Plea, could not be W. Thackston Knt. mentioned in the Letters Patent, for Esquire is drowned in the Name of Knight; so that a Knight cannot be an Esquire; and a Grant to A. B. Knt. is absolutely void, if A. B. be only an Esquire. Knight is a Name of Dignity and parcel of a Man's Name, as much as his Christian-Name. It was said that it should have been averred, That W. Thackston was revera an Esq; but cognit. & reputat. Miles, at the Time of the Grant; but that would not have aided it, for a Man cannot be a Knight by Reputation, for there can be no Foundation for such a Reputation; and it is not the Party's saying in his Plea, I am the Man, that will explain the Grant, but the Identity must appear on the Face of the Grant it self. Upon this the Judgment was affirm'd by Holt C. J. Turton and Eyre Justices; but Rokeby J. held that here was a sufficient Demonstratio personæ, and that it ought to have been reversed.

Grant to a Knight by the Name of Esquire, is void.

Que

QUE ESTATE.

Scilly *versus* Dally. Paſ. 10 Will. III. B. R. Intr. Hill. 9 Will. III. B. R. Rot. 747.

Commencement of particular Eſtate muſt be ſhewn.

IN Replevin, the Defendant avow'd and ſet forth that J. S. was poſſeſſed of a Meſſuage and 40 Acres of Land, ſetting out the Time of the Commencement of the Leaſe, and demiſed, rendring Rent, &c. And that he being poſſeſſed of the Reverſion died, and it came to his Executor, and for Rent-arrear he avow'd. The Plaintiff demurr'd, and ſhew'd for Cauſe that the Avowant had not ſhewn who was Leſſor of J. S. And for this it was held naught. Per Holt C. J. In Debt for Rent it is enough to ſay dimiſit; And if it be brought againſt an Aſſignee, that he demiſed to ſuch a one, whoſe Eſtate the Defendant hath, is enough for the Leſſor or his Executor, (Quære tamen of the Heir) without making a good Title to himſelf; yet an Avowry differs from a Declaration in many reſpects. In a Declaration in Debt for Rent, Nil debet is a good Plea, and traverſes the whole Declaration; but there can be no general Iſſue to an Avowry, but ſome ſpecial Point muſt be traverſed; and therefore, becauſe it does not appear out of what Eſtate, or in what manner this Term was derived, Judgment muſt be for the Plaintiff. Vide Cro. Car. 571. The Reaſon, why the Commencement of particular Eſtates muſt be ſhewed in pleading, is, becauſe they are created by Agreement out of the primitive Eſtate; and the Court muſt judge whether the primitive Eſtate and Agreement be ſufficient to produce the particular Eſtate claimed; and this is a fundamental Rule which ought not to be broken upon fancied Inconveniencies.

Diverſity between Counts and Avowries.

Recognizance, Statutes, Elegit, Extent, &c.

Hammond *verſus* Wood. Trin. 3 W. & M. B. R.

THE Conuſee of a Statute had Lands extended and delivered to him upon a Liberate: The Conuſor being in Poſſeſſion, continued his Poſſeſſion; afterwards the extended Intereſt was aſſigned; and the Queſtion was, Whether it was aſſignable? The Court held not: It was objected, That before Entry by the Conuſee, this was like an Intereſſe termini, or the Intereſt of one that has a Leaſe to commence at a future Day, which is aſſignable; ſo here the Conuſee hath an Eſtate before Entry: Sed per Holt C. J. By Return of the Extent an Intereſt veſted in the Conuſee: The End of the Liberate is to have an actual Poſſeſſion of the Intereſt; and it muſt be taken that he has by the Return of the Liberate; the Sheriff returning thereupon liberari feci, the Conuſee is eſtopped to ſay otherwiſe: If then the Conuſor continues to keep Poſſeſſion after this Return, the Conuſee's Eſtate is turned to a Right, like the Caſe of Diſſeiſee making continual Claim, as ſoon as ever the Diſſeiſee leaves the Premiſſes, the Continuance of Poſſeſſion by the Diſſeiſor, makes a freſh Diſſeiſin. Vide 1 Inſt. 156. Lit. 129. And this is not like the Caſe of a Mortgagor, who continues in by Conſent, and not in oppoſition to the Mortgagee.

(1) Conuſee cannot aſſign his Intereſt after Extent and *Liberate*, if Conuſor continues in Poſſeſſion.

Putten *verſus* Purbeck. Trin. 12 Will. III. B. R.

TO a Scire facias upon a Judgment, the Defendant pleaded in Bar, that the Plaintiff had before ſued an Elegit on the ſame Judgment directed to the Sheriff, who thereupon returned an Inquiſition taken, and a Delivery of ſuch certain Parcels thereof. [Et nota, the Parcels amounted to more than a Moiety] and prayed Judgment, if the Plaintiff ſhould have any other Execution; to which it was demurred; and the Court held that the Execution was merely void; for the Sheriff had only a circumſcribed Authority and had exceeded it; and if the Plaintiff had brought

(2) On *Elegit*, if the Sheriff delivers more than a Moiety, the Execution is void.

an Ejectment, he could not have recovered the Poſſeſſion on this Title, and therefore ſhould be at Liberty to purſue a more effectual Execution.

Domina Regina *verſus* Ewer. Paſ. 1 Ann. B. R.

(3) *Certiorari* to remove an Indictment not a *Superſedeas*, unleſs Recognizance entred into in 20 *l.*

A Scire facias was brought on a Recognizance taken before a Judge upon granting a Certiorari to remove an Indictment from the Seſſions of the Peace, which upon Oyer was entered in hæc verba; and was for 40 l. whereas the Sum preſcribed by the Statute is 20 l. Et per Holt C. J. Before 5 & 6 W. & M. c. 11. any Judge might take a Recognizance, which is not taken away; but if it be not according to the Statute, which is in 20 l. the Certiorari will be no Superſedeas; yet, whether it be or no, it is ſtill good as a Recognizance at Common Law.

Shuttle *verſus* Wood. Mich. 2 Ann. B. R.

(4) In C. B. if Recognizance be taken at a Judge's Chamber, it muſt be ſo declar'd on; but in B. R. as if taken in Court.

In Debt on a Recognizance of Bail in C. B. the Plaintiff declared that the Defendant per ſcriptum ſuum obligatorium recognit. in curia dictæ Dominæ Reginæ de Banco coram Thoma Trevor Mil. & Sociis ſuis, &c. Defendant pleaded Nul tiel Record; the Recognizance certified, appeared to be taken before Mr. Juſtice Nevil, at his Chambers. Et per tot. Cur'. The Plaintiff hath failed of his Record, and hath varied in his Deſcription from the Recognizance. Et per Holt C. J. If it had been entered as taken in Court, then it had been well enough: In this Court the Courſe is always to enter them as taken in Court, tho' taken actually by a Judge in his Chamber, and in this Court they are not taken in a Sum certain, as in C. B. neither are they a Record till entered; but in C. B. 'tis a Record immediately upon the firſt Caption, and binds the Lands before it be filed at Weſtminſter, and when it is filed, then it is a Record in Court, and a Scire facias or Debt lies upon it, either in Middleſex where filed, or in London where taken; whereas on a Recognizance in this Court of B. R. the Action or Scire facias muſt always be brought in Middleſex.

RECORDS.

Waites *verſus* Briggs. Mich. 6 W. & M. B. R.

IN Debt for an Eſcape the Plaintiff declared the Priſoner was committed and eſcaped, and becauſe he did not ſay prout patet per Recordum, the Defendant demurred generally; but the Plaintiff had Judgment; for the Giſt of the Action was the Eſcape, and the Commitment only Inducement. Et per Holt C. J. In Debt on a Judgment quod cum recuperaſſet, is good without a prout patet per Recordum; and the Defendant may plead Nul tiel Record. Et per G. Eyre J. The Matter here is grounded on the Fact, for Nil debet is a good Plea, and not on the Matter of Record. And the Rule in Co. Lit. 303. where the Difference is taken between Caſes, where the Record is the very Foundation, and where Inducement, is a good Diverſity. Vide 1 Sid. 16. Judgment for the Plaintiff.

(1) In Eſcape the Plaintiff did not alledge the Commitment *prout patet per Recordum*, but well on general Demurrer.

Dominus Rex *verſus* North. Hill. 8 Will. III. B. R.

PER Holt C. J. It is an Error in the Clerks in London, that upon a Certiorari they return only a Tranſcript, as if the Record remained below; for in C. B. tho' they do not return the very individual Record, yet the Tranſcript is returned as if it were the Record, and ſo it is in Judgment of Law.

(2) Upon a *Certiorari* the very Record is return'd.

Thompſon *verſus* Leach. Paſ. 9 Will. III. B. R.

PER Holt C. J. You ought not to move to read a Word of a Record, in order to make a Conſilium, where the Roll is of a precedent Term, unleſs it be filed; for you ought not to have a looſe Roll, unleſs it be a Roll of that Term of which it ought to be a Record.

(3) Roll of precedent Term ought to be filed.

Moor *versus Manucaptor*. Garrett. Mich. 10 Will. III. B. R.

(4) Upon *Nul tiel Record* pleaded of a Record of the same Court, Day may be given to the Party to bring it in, or for the Justices to inspect the Record; but Defendant cannot demur.

A Scire facias against Bail; the Defendant pleaded, That no Capias issued forth against the Principal; the Plaintiff replied and set out the Capias, prout patet per Recordum, &c. Defendant rejoins Nul tiel Record. Plaintiff surrejoins, habetur tale Recordum, and prayed that the Court will inspect the Rolls, &c. The Defendant demurs, and the Court held this Demurrer was ill: Upon Nul tiel Record pleaded, where it is a Record of another Court, the other Party replies, quod habetur tale Recordum, and the Court gives him a Day to bring it in: But if H. pleads a Record of the same Court, the other Side may crave Oyer, &c. or may plead Nul tiel Record, and then there are two Ways of Proceeding in such Case; for either the Court may give the Party a Day to produce the Record; which Entry is, Et dictum est præfato defendenti, quod habeat Recordum hic tali die sub suo periculo, &c. or the Court may give Day to inspect the Record themselves. Et quia Justiciarii hic se advisare volunt super inspectione & examinatione Recordi per prædict. Defendentem superius allegati dies datus est partibus prædict. hic usq; &c. Vide Dy. 228.

But in the principal Case, what does the Defendant do by his Demurrer, but deny that the Court can inspect the Records in the Court before them? Which they may most undoubtedly; therefore Judgment must be given against him.

Anonymus. Trin. 11 Will. III. B. R.

(5) Printed Statute not Evidence upon *Nul tiel Record*.

IN an Action against H. Defendant pleaded the Composition-Act; the Plaintiff replied Nul tiel Record; upon the Day given to bring in the Record, the Defendant brought in the printed Act. Et per Holt C. J. An Act printed by the King's Printers is always allowed good Evidence of the Act to a Jury; but was never allowed to be a Record yet: You must get an Exemplification under the Great Seal, and then plead it exemplified, and then no Man can deny it.

Turner *versus* Barnaby. Trin. 2 Ann. B. R.

(6) Act of the Court upon Record may be altered the same Term, of the Party, not.

IN Ejectment, the Defendant being called to confess Lease, Entry and Ouster, made Default, and that Default was recorded. Afterwards the Plaintiff would have waived it, supposing the Record of it to be in the Breast of the Court during the

Term. Et per Holt C. J. There is a Diverſity between an Act of the Court done upon Record, for that is in the Breaſt of the Court, and may be altered by them during the Term; and an Act of the Party recorded by the Court, as a Nonſuit or Default, for that once recorded, cannot be altered by the Court; for that would be a Means of introducing Falſity in Matter of Fact into Records.

Common Recoveries.

Sir John St. Alban's *Caſe.* Trin. 1 W. & M. C. B.

(1) Recovery ſuffer'd by an Infant.

SIR John St. Albans being of the Age of nineteen Years, his Siſter, who was the next in Remainder, and alſo his Heir, married one of his Footmen: He petitioned the King for Leave to ſuffer a Common Recovery, who referred it to the Judges of the Common Pleas, before whom ſeveral Precedents of Recoveries, ſuffered by Infants upon Privy Seals, were cited, viz. One Bivarny, the 1ſt Day of June, 16 Car. 1. One Young the 23d Day of November, 11 Car. 1. another 13 Car. 1. another 14 Car. 1. another 1 Jac. 2. another 4 Jac. 2. by Toby; another 4 Jac. 2. another by John Croke, Son of Sir John Croke, 10 Car. 2. The Judges obſerved that ſeven of the Petitions were by Fathers upon the Marriage of their Sons, and an equal Recompence given, whereas here was neither Father nor Marriage in the Caſe; and they ſaid this Caſe had been carried too far already, therefore diſallowed it. Vide Hob. 196. 1 Ro. 731. 1 Cro. 307.

Clithero

Clithero *versus* Franklin & Ux'. Paſ. 2 W. & M. C. B. Rot. 207.

(2) To A. and his Wife for Life, Remainder to the Heirs male of A. on the Wife begotten; A. cannot dock this during the Wife's Life.

IN a Writ of Ayel the Iſſue was, Whether the Grandfather died ſeiſed in Fee? The Jury found that the Grandfather covenanted to ſtand ſeiſed to the Uſe of himſelf and Mary his Wife for their Lives, Remainder to the Heirs males of the Grandfather on the Body of the ſaid Mary begotten, with Remainders over: The Grandfather ſuffered a Common Recovery and died: Mary ſurvived. To prove the Recovery void, it was inſiſted, that Owen and Morgan's Caſe was not Law, for if Baron and Feme had an Intirety, then each had the Whole, and the Baron might make a Tenant to the Præcipe for the Whole. Pemberton contra, That Caſe was never yet queſtioned; the Wife's Eſtate hinders the Intail from executing in the Baron; ſo that 'tis only a kind of contingent Eſtate after the Death of the Wife, and the Intail cannot be tacked to the Eſtate for Life of the Husband, during the Life of the Wife; becauſe during her Life there is an intervening Eſtate, and accordingly adjudged. 3 Co. 6. Plo. Manxlo's Caſe, 8, 9. 1 Cro. 380. 1 Sid. 83.

Lloyd *versus* Evelin. Paſ. 5 W. & M. B. R.

(3) IN a Writ of Error of a Common Recovery, the Tenant to the Præcipe in the Common Recovery was made by a Fine, the Recovery was ſuffered, and the Fine was reverſed, yet it was held a good Recovery; for there was a Tenant to the Præcipe at the Time.

Lacy *versus* Williams. Trin. 11 Will. III. B. R.

(4) If Tenant gains the Freehold at any Time before Judgment, good.

ERROR of a Judgment in C. B. in Ejectment, wherein a Special Verdict was found, viz. That a Writ of Entry was brought againſt Miles Corbet, Ret. Quindena Martini. That upon the Return Miles Corbet appeared, and the Demandant counted againſt him, That he vouched Lacy the Tenant in Tail, and a Summons ad Warrantizandum iſſued, returnable octabis purificationis. After the Teſte and before the Return of the Writ of Summons, viz. the 1ſt Day of January, Lacy the Tenant in Tail, conveyed to Miles Corbet by Leaſe and Releaſe for Life. At the Return of the Summons, Lacy the Tenant in Tail appeared and entered into the Warranty, and vouch'd over the Common Vouchee, and ſo a Common Recovery was had. This

Recovery being held good in C. B. Serjeant Pratt, for the Plaintiff in Error insisted, That Miles Corbet was not Tenant to the Præcipe at the Return of the Writ of Entry. He agreed that if he had purchased before the Return of the Writ of Entry, the Recovery had been good, (otherwise if after, as in this Case,) to bind Strangers or the Issue in Tail, tho' it might be good between the Parties by Way of Estoppel. Vide 1 Ro. 868. 21 E. 3. 5. 5 H. 6. 1. 18 E. 4. 26. 9 E. 4. 12. 3 H. 6. 34. Ratio est, because the Tenant could not render the Lands at the Return of the Writ of Entry, and a Voucher supposes a Seisin; for 'tis a good Counterplea that the Voucher had nothing in the Lands at the Time of the Voucher, and the nec unquam postea is not material; and if the Tenant pleads not Non-tenure as he ought and might, that only binds himself and those that are Parties and claim under him by Estoppel.

Kene contra argued, That the Issue shall be bound where he may have Execution for the Value, 3 Co. 5. 6. 12 E. 4. 19. And 'tis not a sufficient Counterplea of a Voucher to say, the Voucher had nothing tempore, &c. without adding nec unquam postea. Rast. 367. 126. So it is of Non-tenure. Rast. 273. Where the Tenant appears on the Return of the Writ of Entry, and a Recovery is then had, in such Case the Tenant must have the Freehold at the Return of the Writ, because 'tis a Recovery then suffered; but otherwise where there is a Voucher over, or Interpleader, as in this Case; for 'tis sufficient if he become Tenant before Judgment. 41 E. 3. 5. 8 E. 3. 32. 10 E. 3. 21.

Holt C. J. It is not enough in a Counterplea of a Voucher to say, the Voucher had nothing in the Lands at the Time of the Voucher, without nec unquam postea; so it is of Non-tenure: If the Tenant to the Præcipe gains a Freehold before Judgment, 'tis sufficient, for it cannot be said to be a Recovery against him that had nothing; therefore a Writ may be made good by a subsequent Purchase, and so may a Voucher; and 'tis the more reasonable, because the Demandant may have a good Cause of Action, tho' the Tenant have not the Land; for 'tis not his being Tenant to the Præcipe, but the Demandant's having a Right to the Land, that is the Foundation and Cause of Action; and therefore 'tis in Law sufficient, if the Tenant have the Land to render at any Time before Judgment. And the Judgment was affirmed Nisi causa. Afterwards Mr. Squib came to shew Cause why the Judgment should not be affirmed, and cited 18 E. 3. 13. 18 E. 4. 26. 2 Ro. 764. Sed non allocatur: And Holt C. J. said, The Recompence in the Case of Common Recoveries was ratio una, but non unica, for a Reversion expectant is barred by a Common Recovery, and yet the Recompence cannot extend to that; which he said was a bold Advance in Favour of Common Recoveries. The Rule was made absolute.

Non tenure cur'd by subsequent Purchase.

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Page *versus* Hayward. Trin. 3 Ann. B. R.

(6) NICHOLAS SEARLE by his Will devised to his Neice Mary Bryant and the Heirs male of her Body, upon Condition and provided that she intermarry with and have Issue male by one surnamed Searle, and in default of both Conditions he devised to Eliz. Bryant [in the same Manner] and in Default thereof he devised to George Searle for sixty Years, if he so long live, Remainder to the Heirs Males of the Body of the said George, and their Issue Male for ever. Mary and Elizabeth, with her Husband, (for she had then married one Cliff,) joined in a Fine to make a Tenant to the Præcipe, who was one Isaac Savery. Isaac Savery vouched Mary Bryant, Eliz. Cliff, and her Husband, and the Wife of the Devisor with her Husband, she being again married, and vouched them all jointly, and they vouched over the common Vouchee. Et per Holt C. J. & tot. Cur', it was adjudged,

To A. and the Heirs of her Body by one of the Name of *Searle*, is Tail.

1st, That the Estate devised to Mary was a good Estate-Tail, and so was the Estate to Elizabeth; but it is a special Intail; 'tis an Estate to her and the Heirs Males of her Body begotten by a Searle, which is a middle Intail; not the highest nor the least; for it might have been to her and the Heirs of her Body begotten by J. Searle, which had been more particular; yet this is a good Estate Tail within the Statute de donis, for it is within the Reason of the Statute.

Words sounding conditional, taken as limitation in a Will.

2dly, The Words, upon Condition, &c. tho' they are express Words of Condition, shall be taken to be a Limitation; so it is held in 1 Vent. 199, 202. And Holt C. J. said, he saw no reason why they might not be so construed in a Deed, tho' the Law had not been carried so far; and so the Sense is, if she has no Issue by a Searle, upon her Death, the Estate shall remain over.

3dly, That the Estate Tail of Mary and Elizabeth, or either of them, does not cease by marrying one that is not a Searle; for the Remainder over is in Default of both Conditions, and in the mean Time it is limited to her and the Heirs male of her Body, and she may survive the first Husband and marry a Searle, and so there is a Possibility as long as she lives.

Condition that runs with the Land cannot be barr'd by Recovery, otherwise of Condition collateral.

4thly, If the Estate had been to Mary and the Heirs male of her Body by a Searle to be begotten, provided and upon Condition if she do marry any but a Searle, that then it shall remain and be to J. S. and his Heirs, a Common Recovery suffered before Marriage will bar the Estate Tail and Remainders; and tho' she after marry with another, it shall not avoid the Recovery: And the Court took a Difference between a collateral Condition and a Condition that runs with the Land: If the Donor reserve

a Rent with a Condition to re-enter, a Recovery will not bar it; otherwise if it be to re-enter for Non-payment of a Sum in groſs. Vide 1 Mod. 108, 111. 2 Lev. 28.

And as to Common Recoveries (being of great Uſe) the Chief Juſtice deſired to ſpeak largely.

1ſt, If Tenant to the Præcipe vouches Tenant in Tail in Poſſeſſion, and him in Remainder jointly, and they jointly vouch over the common Vouchee, this is good; not but that it may be more regular, that the Tenant vouch Mary Bryant, and ſhe Elizabeth, and ſhe over the common Vouchee, that the Recovery in Value may not be joint, but enure ſeverally; yet the other Way is ſufficient; for where in an Adverſary-Action, a Præcipe is brought againſt ſeveral, 'tis enough that one hath the Tenanty of the Land; and if he would plead that he is ſole Tenant, and traverſe that the others have any Thing, the Demandant may admit that and proceed as to him, and the Writ ſhall only abate as to the reſt; alſo the others may diſclaim; and as a joining a Stranger with a Tenant does not hurt, ſo a joining a Stranger with a Vouchee does not; for he is but in loco tenentis, a Tenant by the Warranty. 20 E. 3. 10. 2 E. 3. 8. Br. Several Tenancy 3, 4. 19 H. 6. 14. Raſt. 276.

Tenant in Tail, and he in Remainder may be vouch'd jointly.

2dly, If Tenant in Tail makes a Tenant to the Præcipe, and he vouches a Stranger, and the Stranger vouches Tenant in Tail, and he the common Vouchee, that is good; for his being a Stranger is not material, becauſe in Judgment of Law he is become Tenant by the Voucher to the Præcipe, and a Releaſe to him is good, and the Voucher is good whether there be a real Warranty or no: At Common Law, if a Stranger was vouched, the Demandant could not counterplead it but by Weſt. 1. c. 40. he may if he be abſent, counterplead the Voucher, viz. That the Vouchee and his Anceſtors never had any Thing in the Land, not if he be preſent; it is enough that Tenant in Tail comes in and owns a Warranty; for there may be a Warranty; ſuppoſe an Adverſary-Action againſt Tenant in Tail who has a Warranty, and he makes a Feoffment in Fee with Warranty, or has levied a Fine with Warranty, and the Feoffee or Conuſee vouch the Tenant in Tail, he may make uſe of his Warranty, and yet he was not ſeiſed of the Eſtate Tail; but in that Caſe he may dereign the Warranty, and then he recovers in Recompence of his Eſtate Tail; for whenever Tenant in Tail comes in as Vouchee, he comes in in Privity of all Eſtates he ever had, and conſequently may dereign the Warranty. Vide 1 Inſt. 385. a.

If Tenant vouches a Stranger, who vouches Tenant in Tail, and he enters into Warranty, it is good.

Tenant in Tail coming in as Vouchee comes in in Privity of all Eſtates he ever had.

And the Chief Juſtice ſaid, The Vouchee's being a Stranger was not material; becauſe, tho' there be no real Warranty, the Recovery in Value is the ſame, and the Admittance of Tenant in Tail has made it real.

RECUSANTS.

[*Vide Title* Church of England.]

Domina Regina *verſus* Peach. Mich. 3 Ann. B. R.

Licence to diſſenting Miniſter in-roll'd in one County, don't extend to another.

A Diſſenting Miniſter having qualified himſelf according to the Toleration-Act in one County, kept a Conventicle in that County; and afterwards removed into another, and kept a new Conventicle without a new Qualification: The Juſtices convicted him notwithſtanding the Toleration-Act. The Attorney-General moved for an Attachment againſt the Juſtices, but it was denied; then he moved for a Mandamus to permit him to preach, and that was denied alſo: The Court held, 1ſt, That a Mandamus is always to do ſome Act in Execution of Law, whereas this would be in Nature of a Writ de non moleſtando. 2dly, That a diſſenting Miniſter is ſtill liable to the old Penal Laws for Preaching in Conventicles, unleſs he qualify himſelf according to the Act of Toleration. 3dly, That a Licence inrolled at the Seſſions in one County, will not extend to another County; but he muſt have a Licence inrolled in the County where he preaches. But Note, The Law is ſince alter'd in this Particular, by the Act for preſerving the Proteſtant Religion, by better ſecuring the Church of England. 10 Annæ.

Releaſe and Defeazance.

Aloff *verſus* Scrimſchaw. Trin. 1 W. & M. B. R.

IN Debt on a Bond for 1000l. the Defendant pleaded a Covenant ſince made by the Plaintiff, whereby he covenanted not to ſue for the ſaid Debt upon the ſaid Bond, for and during the Term of 99 Years: This was held naught upon Demurrer, for it is but a mere Covenant, and doth not enure as a Releaſe or Defeazance, and ſo cannot be pleaded in Bar. Vide 1 Cro. 352, 623. 1 Ro. 939. 21 H. 7. 24.

(1) Covenant not to ſue for a certain Time, is not a Releaſe or Defeazance.

Clayton *verſus* Kynaſton. Hill. 10 Will. III. B. R. Intr. Trin. 10 Will. III. B. R. Rot. 246.

CLAYTON, the Executor of Clayton, the Executor of Winterſhall, brought Covenant againſt Kynaſton upon Articles, and declared as on Articles made between Killigrew and the ſaid Kynaſton, and others ex una parte, and Winterſhall ex altera parte, wherein it was covenanted, that if Winterſhall ſhould be minded to give over acting Plays, and ſhould give Notice in Writing three Months before he left off, that then three Months after ſuch Notice in Writing, Winterſhall ſhould be allowed for every acting Day, 5 s. per Day, and that after the Death of Winterſhall, 100l. ſhould be paid to his Executors within three Months, Provided ſuch Notice ſhould not be given but in an acting Week; and for Breach aſſigns that the 100l. was not paid within three Months after Winterſhall's Death. The Defendant pleaded that at the ſame Time another Deed was made between the ſaid Winterſhall of the one Part, and the ſaid Kynaſton of the other Part, wherein was contained the ſame Agreement, and then it was farther covenanted by Winterſhall in the ſame Deed, that in Caſe he gave ſuch Notice as aforeſaid, then the ſaid Kynaſton ſhould be diſcharged of all Debts, and be indempnified and ſaved harmleſs from all Agreements or Securities at any Time before made, or hereafter to be entered into; then he avers Notice was given, and that three Months elapſed, &c. and ſo relies upon this as a Defeazance. To this there was a Demurrer.

(2) One Deed not to be conſtrued as a Defeazance of another without Neceſſity.

1ſt, It was urged for the Defendant, that this was a Defeazance; for whatever the Defendant loſt in this Action would be recovered againſt him on his Covenant, which was but Circuity of Action. Vide 1 And. 307. Mo. pl. 80. 2 Saund. 47, 48. One Deed a Defeazance to another made at the ſame Time with it. Vide 1 Inſt. 265. Rebutter founded on the ſame Reaſon.

The Court agreed, that if A. be bound to B. and then B. reciting this Bond, covenants to ſave him harmleſs, this is an abſolute Defeazance; and if it be to ſave him harmleſs on a Contingency, 'tis a conditional Defeazance, becauſe it hath an expreſs Relation to the Deed; but in the principal Caſe there is not a Relation between the Deeds; but on the contrary, the Plaintiff's Deed is only to indempnify againſt all Covenants heretofore made, or hereafter to be made. There is therefore no Neceſſity to conſtrue the Defendant's Deed to be void and uſeleſs as ſoon as made, or that the one Deed has deſtroyed the other which was made at the ſame Time with it, or that Kynaſton may play faſt and looſe at his Pleaſure. Alſo the Court agreed, That where two are jointly and ſeverally bound in a Bond, a Releaſe to one diſcharges the other, and in ſuch Caſe, if the joint Remedy is gone, the Several is gone too; and that in the Caſe at Bar, the joint Remedy was loſt; but the Chief Juſtice, who delivered the Opinion of the reſt ſaid, they did not determine, That on Covenant, where the joint Remedy failed, there could not be a ſeveral Remedy.

2dly, It was objected to the Declaration, That he declares of a Deed made between Kynaſton of the one Part and Winterſhall of the other, and does not ſay prædict. Winterſhall, for want of which he does not appear to be the ſame Perſon: This Exception was not much heeded. Cases cited pro and con were Yel. 103. 3 Cro. 913. Bridgm. 99. Dy. 70. Hard. 178.

Where a Proviſo goes by Way of Defeazance of a Covenant, it muſt be pleaded on the other Side; otherwiſe where by Way of Explanation or Reſtriction of the Covenant.

3dly, It was objected to the Plea, That the Notice is not ſaid to be given in an acting Week; and tho' it was urged to be by Way of Proviſo, and therefore ought to come on the other Side, 5 Co. 78. 3 Cro. 405. 7 Co. 10. Poph. 28. Plo. 376. 1 Leon. pl. 202. and that the Plea ſaid he had Notice ſecundum formam & effectum articulorum; yet Holt C. J. anſwered, That where the Proviſo goes by Way of Defeazance, it muſt be pleaded by him that takes Advantage of it, but this is not ſo, but alters the Senſe of the Covenant, by explaining and tying up the Notice to a particular Time, which would not have been underſtood on the general Covenant, by which Means it becomes a Part of the Covenant, ſo that you muſt plead accordingly; and ſecundum formam & effectum articulorum, is only Matter of Concluſion, which cannot ſerve without Premiſſes. And upon this ſingle Point, Judgment was given for the Plaintiff.

Lacy *verſus* Kynaſton. Paſ. 13 Will. III. B. R.

(3) Defeazance muſt contain proper Words of Defeazance.

THE Plaintiff brought Covenant as Adminiſtrator to Lacy, and declared on the ſame Indenture in the Caſe before between Killigrew and Kynaſton, and they ex una parte, and Lacy ex altera parte, reciting former Articles, and they hereby covenant jointly and ſeverally with Lacy, That if he be minded to leave acting, and gives three Months Notice thereof to the Company, he ſhall be paid 6s. 3d. per Day for his Life, and that within three Months after his Death, his Executors ſhall be paid 100l. And that if he die without ſuch Notice, his Executors ſhould be paid 100l. within ſix Months after his Death, in the Non-payment whereof the Breach was aſſigned: The Defendant craved Oyer, and pleaded another Deed made the ſame Day and Year, whereby Lacy and others covenant jointly and ſeverally with the Defendant, that if he left off Acting, and gave Notice, he ſhould be freed and indempnified of and from the ſaid Covenant, and avers he left off and gave Notice, and became diſcharged, and ſo pray'd Judgment of the Action. The Plaintiff demurs, &c. And the Queſtion was, Whether this was a Covenant or a Defeazance? And the Court held,

1ſt, That this Covenant in its Nature was not a Defeazance, becauſe it wanted Words of Defeazance, viz. that the Thing be void.

Bond from A. and B. to H. joint and ſeveral. Covenant from H. not to ſue A. is not a Defeazance.

2dly, If A. and B. are jointly and ſeverally bound to H. and H. covenants with A. that he will not ſue A. this is not a Defeazance, for ſtill there is a Remedy on the Bond againſt B. otherwiſe if A. only had been bound, for then ſuch Covenant excludes him from any Remedy for ever, to avoid Circuity of Action. Vide 43 Aſſ. pl. 44. This Difference being applied to the principal Caſe rules it, and it is but reaſonable; becauſe to conſtrue this to be or enure as a Releaſe or Defeazance, is to diſcharge all; otherwiſe of a Covenant, 34 H. 8. Br. Eſtranger al fait. 21 Lit. Sect. 376. Inſt. 232. Hob. 66.

Topham *verſus* Tollier. Trin. 1 Ann. B. R.

(4) Releaſe of all Demands to the perſonal Eſtate of the Inteſtate, releaſes not a Bond before Judgment and Execution.

DEBT on a Bond againſt an Adminiſtrator, the Defendant pleaded a Releaſe, whereby the Plaintiff reciting there were ſeveral Controverſies between the Defendant and him about a Legacy, and the Right of Adminiſtration, releaſes to the Defendant all his Right, Title, Intereſt and Demand of, in, and to the perſonal Eſtate of the Inteſtate. Upon Demurrer this was held no Plea; for per Holt C. J. there is a Difference between a Releaſe of all Demands to the Perſon of the Adminiſtrator,

ſtrator, as in Yelv. 214. and to the perſonal Eſtate, as in this Caſe; for the Bond is not any Right or Demand to the perſonal Eſtate, till Judgment and Execution ſued out.

REMAINDER.

Corbet *verſus* Tichborn. Paſ. 6 W. & M. B. R.

(1) EJECTMENT and Trial at Bar; the Caſe was, J. S. was Tenant for Life, Remainder to his Wife for Life, Remainder to his firſt, ſecond, &c. Sons in Tail, Remainder to the right Heirs of J. S. The ſaid J. S. commits Treaſon and then has a Son, and then is attainted; and the Court held, that whether the Son was born before or after the Attainder, the contingent Remainder to him was not diſcharged by the veſting in the Crown during the Life of J. S. becauſe of the Wife's Eſtate, which is ſufficient to ſupport it.

Thompſon *verſus* Leach. Hill. 9 Will. III. B. R.

(2) Surrender of Tenant for Life being *Non Compos* to a Remainder-Man, is void, and cannot bar contingent Remainder.

Right of Entry will ſupport contingent Remainder, Right of Action not.

A Deviſe was to Simon Leach for Life, Remainder to his firſt, ſecond and third Sons, &c. Remainder to Sir Simon Leach in Tail, the Remainder to the right Heirs of Simon Leach; Simon Leach the Tenant for Life ſurrendered his Eſtate by Deed to Sir Simon Leach, and after that had a Son born and died, and the Son brought an Ejectment againſt Sir Simon, and Simon his Father was found to be Non Compos at the Time of the Surrender. Et per Cur'. Taking the Surrender to be voidable only it was held, That the Plaintiff could have no Title; for his Eſtate in Remainder was a contingent Remainder, and if the precedent Eſtate was gone and determined by the Surrender, the Contingency could not ariſe. There muſt be a particular Eſtate actually in being, or a preſent Right of Entry. [Vide Bigot and Smith's Caſe, Cro. Car.] And it is not enough that there be

a Right of Action, but it must be a Right of Entry: And they held that it was not for want of Right to the Thing, but of Capacity to do the Act, that a Mad-man is hindered to avoid his own Grant. 1 Cro. 102. 2 Saund. 387. 3 Keb. 2. And if this had been done in the Life of the Surrenderer by Inquisition, that would have preserved the contingent Remainder, but that cannot be done now, because the particular Estate is determined. To shew this, Holt C. J. said,

If there be Tenant for Life with a contingent Remainder to H. and Tenant for Life is disseised, and after that a Discent cast, and five Years expire, now the contingent Remainder is gone, for there is nothing now to support it, the Right of Entry being turned into a Right of Action: But before the Discent the Right of Entry was sufficient.

But they held the Surrender in this Case to be merely void, so that the particular Estate remained in him, notwithstanding the Surrender and the contingent Remainder rightly vested.

If there be Tenant for Life with a contingent Remainder, and he makes a Feoffment in Fee upon Condition, and the Contingency happens before the Condition broken, the contingent Remainder is destroyed; for there must be a particular Estate, or a present Right of Entry when the Contingency happens; but if Tenant for Life enters for Breach before the Contingency happens, the contingent Remainder is revived, and may vest. That Right of Entry must be present.

Weeks *versus* Peach. Mich. 13 Will. III. B. R.

H. Devised out of his Lands a Rent to one for Life, with Remainder over, &c. And Shower objected, That there could not be a Remainder of a Rent de novo; for there cannot be a Remainder where there cannot be a Reversion. But per Holt C. J. There may be a Remainder of a Rent de novo; for the Intent of the Party gives it first a Being for the Whole, and then the lesser Estates are carved out of it. Vide 2 Lut. 1225. (3) Remainder may be of a Rent *de novo*.

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Stephens & *Ux. verſus* Snow. Hill. 2 W. & M. B. R.

(1) Growing Rent not releaſed by Releaſe of all Demands.

THE Plaintiff declared upon a Leaſe for Years, reddend. 30 s. at Lady-Day and Michaelmas, and aſſigns for Breach Non-payment of a Year's Rent due, and ending at Lady-Day, 1689. The Defendant pleaded a Releaſe dated the 18th Day of November, 1688. of all Demands; and upon Demurrer, Judgment was given for the Plaintiff. For the growing Rent not due, which is incident to the Reverſion, was not diſcharged; tho' the firſt half Year's Rent, which was a Duty demandable, was releaſed; but here the Releaſe being pleaded as a Bar to all, which it is not, the Plea is naught, and Judgment muſt be given for the Plaintiff.

Lord Rockingham & *al. contra* Oxenden & *al. coram* Trevor, *Maſter of the Rolls*, 1711.

(2) THE Leſſor dies upon Michaelmas-Day, between three and four in the Afternoon, before Sun-ſet, the Rent being reſerved payable on Michaelmas-Day; the Queſtion was, Whether the Executor or the Heir, or which is the ſame, the Jointureſs of the Leſſor ſhould have this Rent? The Executor inſiſted that this was the Rent-Day, that it might have been paid in the Morning, and that a Releaſe upon ſuch Payment had been a Diſcharge, and they denied the Opinion of Hale in 1 Saund. 287. And ſaid that ſo it was held by the Judges of Aſſize at Durham, viz. Baron Bury, &c. But on the other Side it was argued and decreed, That the Rent ſhould go to the Heir or Jointureſs, becauſe at the Time of the Death of the Leſſor, there was no Remedy nor Means to compel the Payment thereof. Vide 10 Co. Clun's Caſe. 2 Bulſt. 293. Plowd. 172, 173. 1 Inſt. 202. 1 Keb. 59. 1 Sid. 162. 2 Cro. Fox *verſus* Whicheot.

REPLEADER.

IT was laid down by the Court in the Case of Staple and Hayden, Trin. 2 Ann. B. R. Which see Title Default, p. 216. First, That at Common Law a Repleader was allowed before Trial, because a Verdict did not cure an immaterial Issue: But now a Repleader ought never to be allowed before Trial, because the Fault of the Issue may be helped by the Trial by the Statute of Jeofails. Not allow'd before Trial.

2dly, That if a Repleader be denied where it should be granted, or granted where it should be denied, it is Error. If denied where grantable, Error.

3dly, That the Judgment of Repleader is general, viz. Quod partes replacitent; and the Parties must begin again at the first Fault, which occasioned the immaterial Issue: That if the Declaration be ill, the Bar ill, and the Replication ill, the Parties must begin de novo; but if the Bar be good and the Replication ill, at the Replication. Vide 3 Keb. 664. Parties begin *de novo* at the first Fault.

4thly, No Costs are allowed on either Side. No Costs.

5thly, That a Repleader cannot be awarded after a Default. Not after Default.

Replevin and Homine Replegiando.

[*Vide Title* Avowry.]

Halet *verſus* Burt. Hill. 8 Will. III. B. R.

(1) Bailiff of a Hundred cannot grant Replevins out of Court.

IN Treſpaſs for taking, &c. The Defendant juſtified that the Place where was a Hundred, and Time out of Mind had a Court of all Actions, Replevins, &c. grantable in or out of Court, and that a Replevin was granted to him by the Bailiff out of Court, virtute, &c. It was queſtioned whether a Hundred-Court could preſcribe to hold Plea of Replevins, becauſe the County-Court could not hold Plea of them at Common Law, but were enabled by the Statute, which extends not to the Hundred-Court? But per tot. Cur'. clearly; Suppoſing they may grant them in Court, yet they cannot preſcribe to grant them out of Court.

Richards *verſus* Cornforth. Mich. 9 Will. III. B. R.

(2) Avowry for Rent, where part is not yet due, is Error; but might be cured before Judgment, by abating the Avowry as to that.

ERROR of a Judgment in Replevin, wherein the Defendant avowed for Rent and had Judgment; and now Mr. Carthew aſſigned for Error, that part of the Rent became due after the Diſtreſs taken, for the Diſtreſs was made the 26th Day of September, 7 W. 3. which was three Days before Michaelmas; whereas the Defendant had avowed for that Michaelmas Rent. Et per Cur'. This is naught; for the Judgment is to have a Return irrepleviſable, i. e. that he ſhall have the Diſtreſs as a Pledge, till all the Rent avowed for be paid, and that was more than was due at the Time of the Diſtreſs. In this Caſe the Avowant before Judgment ſhould have abated his Avowry, quoad the Michaelmas Rent, and taken Judgment for the reſt; but the Defendant getting his Avowry mended in C. B. the Roll was amended here in B. R. and ſo the Error was cured.

Moor *versus* Watts. Mich. 12 Will. III. B. R.

UPON a Habeas Corpus it was returned, that Watts was in Custody by Vertue of a Capias in Withernam; and the Case was, That upon a Homine Replegiando, the Sheriff returned an Inquisition, finding that the Party was eloigned, whereupon a Withernam issued, returnable octab. Martini, which was not yet come; but the Defendant was taken thereupon and moved to be bailed, and the Matter was four Times moved and debated. It was objected, That he could not be bailed upon the Withernam; for it was an Execution, and he had no Day in Court, and the Plaintiff could not have a new Withernam: And the Lord Gray coming into Court upon an Elongata found, was committed, and lay by a Fortnight: Also they cited Raymond 474. and said the Return of the Elongata was a kind of Conviction, and the Defendant thereby estopped from pleading Non cepit. That which seemed to be the Sense of the Chief Justice, to which the rest agreed, was, (3) *Homine replegiando.*

1st, That a Homine Replegiando does not differ from a common Replevin de Averiis; and that in a Replevin for Cattle, the Sheriff must either return a Deliberari feci, or an Ercule thereof, viz. That no Body came to shew him the Cattle, or Elongata; But he cannot return they were not taken, for that goes to the Point of the Writ which the Defendant is to falsify, and not the Sheriff; that therefore the Sheriff must return an Elongata where he cannot make a Deliverance, and the Defendant is not concluded by the Return of Elongata to plead Non cepit, because it was necessary, and he could not avoid it: And as for this reason, no Action lies against the Sheriff for a false Return of an Elongata, where he cannot make Deliverance; so the Defendant is not concluded to plead Non cepit to the Action, because he cannot falsify the Return. The Sheriff cannot return they were not taken. After *Elongata* returned and *Withernam* awarded, the Defendant may plead *Non cepit.*

2dly, That the Capias in Withernam does not alter the Case nor make it the stronger, because it is the mere Consequence of the Return of the Elongata; therefore he is no more estopped by the Withernam than he was by the Elongata to plead Non cepit, or to claim Property if it were a common Replevin de Averiis.

3dly, That in Replevin de Averiis after an Elongata and Withernam, if the Defendant pleads Non cepit, he shall have his Cattle again, and even a Capias in Withernam against the Plaintiff for them; so it is if the Defendant claims a Property. Since the Taking or Property is in Question, the Law deems it reasonable that the Defendant should have his Goods again during the Dispute: And by the same Reason in a Homine Replegiando Upon pleading *Non cepit* or claiming Property, the Defendant shall have his Goods again. So in *Homine replegiando* he shall be bailed on *Non cepit.*

giando the Defendant upon pleading Non cepit, should be restored to his Liberty; and the Court denied the Withernam to be an Execution, for that cannot be before Judgment, and held it only to be a mesne Process: Also they disliked the Case in Raymond, and the Case of the Lord Gray, but affirmed the Case in the Reg. 79. a. and thought it made for them, and that upon Non cepit pleaded, he might be bailed. Keil. 71. a. F. N. B. 74. were cited. Adding this farther Reason, that hereby the Supposal of the Writ is denied and balanced, and the Matter stands indifferent, according to the Rule of Bailing laid down by my Lord Coke, upon West. 1. c. 15.

Withernam is mesne Process.

4thly, The Court held, That there might be a new Withernam, but observed it was not necessary nor material to determine that in this Case; for the Bail must be in a Sum certain, with Condition that he appear de die in diem; and if Judgment against him, that he render his Body in Withernam ibidem remansurus quousq; he render the Party, and permit him to go at large; therefore if he be rendered again, he is in Custody upon the Withernam, as before. So if H. brings an Audita Querela, and is bailed, and Judgment is against him, when H. is rendered back, he is in Custody again upon the first Execution; and so in an Appeal of Murder, if the Defendant be bailed and makes Default, Process shall go against the Bail, and also a Capias against him; but if he render, he is in Custody upon the Appeal: Yet Note, Upon his Default a new Capias lies against him. So in this Case, if before the Withernam the Defendant had pleaded Non cepit, that had stopped the Withernam; but if that had been found against him, the Impediment was removed, and a Withernam should have gone; so here, if after the Withernam, he plead Non cepit, which is found against him, and he is not rendered, a Capias in Withernam lies against him, as well as Process against his Bail; for there is nothing to hinder it. Vide 8 H. 4. 2. T. Mainprize 23.

There may be a new *Withernam* after the Defendant has been bail'd upon the first.

If on *Elongata* returned the Defendant pleads *Non cepit*, no *Withernam* shall issue.

The Plaintiff's Counsel seeing that by the Opinion of the Court the Defendant could not be bailed, unless he pleaded Non cepit, would not deliver a Declaration; which the Court said, was putting a Difficulty upon them; and upon this, in order to nonsuit the Plaintiff, the Question was, Whether the Plaintiff was demandable upon the Withernam? Also there was a former Question, Whether he might be bailed upon the Habeas Corpus before the Return of the Withernam?

As to the last Point the Court held, That before the Return of the Withernam the Defendant could not be bailed; and so it is of an Appeal of Murder, the Defendant ought not to be bailed before the Return of the Writ; and tho' this has been done in an Appeal by some Judges, yet per Holt C. J. It was done minus rite; he would not therefore allow Bail before the Return of

In *Homine replegiando*, Defendant cannot be bailed before the Return of the *Withernam*.

the Withernam, and ſaid, that in a Homine Replegiando after an Elongata returned, if the Defendant comes in gratis and pleads Non cepit, he ſhall not be put to find Bail; (Ratio videtur eſſe, becauſe hereby the Withernam is ſtopped or ſuſpended,) but if he comes in in Cuſtody upon a Capias in Withernam, he muſt give Bail, and cannot be admitted to that till he call for a Declaration, and plead Non cepit.

As to the other Point the Chief Juſtice ſaid, that whenever a Writ is awarded, which is returnable, the Return-Day is a Day to both Parties to appear, and tho' the Writ be returned not ſerved, the Defendant may appear to prevent any ill Conſequence, As to prevent a Capias. 5 E. 4. 69. So here to ſave himſelf on a Withernam. Reſpond. 57. 7 E. 4. 5. Upon a Diſtringas proximas villas, &c. the Defendants have no Day, yet they may appear and traverſe. In a common Replevin the Original gives no Day, for that is Vicontiel; ſo is the Alias, but the Pluries is returnable here; and tho' there is no Summons nor Attachment in the Writ, yet the Day of the Return is a Day to the Parties, and the Entry is, that the Defendant attachiatus eſt ad reſpondend. de pl'ito quare cepit, &c. And the Reaſon is, becauſe tho' in Truth there was not actually an Attachment, yet virtually and in conſequence of Law it is ſo, he being bound to appear upon the Peril of a Withernam. And tho' the Plaintiff be abſent, he may make an Attorney: Hereupon he was called and nonſuited, for otherwiſe the Defendant might loſe his Liberty for ever, by ſuch a Contrivance.

Plaintiff is demandable on the Return of the *Withernam*, and may be nonſuited for not appearing.

Horn *verſus* Lewin. Hill. 12 Will. III. B. R.

(4) In Replevin the Defendant made Conuſance for 100 l. de redditu onerat. in Arretro pro uno Anno. The Plaintiff as to 50 l. pleads de injuria ſua propria abſque hoc quod fuit in Arretro, and as to the other 50 l. that he was ready on the Land till Sun-ſet, and none came to receive it, and that he is ſtill ready to pay it, and brings the Money into Court: Defendant demurs ſpecially to the firſt Plea, quia attingit ad generalem exitum: And as to the other 50 l. he takes it out of Court, & pro dampnis dicit quod non obtulit, &c. and upon this the Plaintiff demurred.

In a Plea in Bar of Tender of Rent in Replevin, the Money ought not to be brought into Court.

This Caſe being ſeveral Times ſpoken to, it was held,

1ſt, That de injuria ſua propria abſq; hoc, &c. was an impertinent round-about Way of Pleading the general Iſſue, and that it amounted to no more than the general Iſſue, riens in Arrere, and conſequently was ill upon a ſpecial Demurrer: Alſo this Traverſe put the Defendant to an unneceſſary Replication; therefore as to the 50 l. 'twas clear for the Defendant.

De injuria ſua abſq; hoc quod fuit in Arretro, amounts to the general Iſſue.

2dly,

2dly, As to the other 50l. the Court held, 1ſt, That the bare paratus was not ſufficient, and did not amount to a Tender without an obtulit, and therefore his being ready on the Land, ſince he did not tender the Rent, did not oblige the Grantee to demand the Rent before he made Diſtreſs. Hob. 207. 1 Ven. 322. And ſo the Diſtreſs was lawful without a Demand, and then the Avowry or Conuſance of the Defendant ſtands unanſwered. 2dly, The Profert of the Money was impertinent and idle. Keil. 20. Dy. 227. 2 E. 4 25. Pl. 15. 2 Cro. 126. In Debt upon a Bond, there may be a Profert, to ſave Damages; becauſe there the Money is the Thing in demand: But it cannot be in an Avowry to a Replevin, becauſe the Avowry is to juſtify the Taking the Cattle, and whether the Money is paid or not, is not the Queſtion; but if the Diſtreſs was rightfully taken, the Avowant muſt have a Return; if wrongfully, he muſt anſwer the Plaintiff's Damages. If then the Profert was ſuperfluous, ſo was the Avowant's accepting it, and Judgment muſt be given for the Avowant on the Avowry, by which it appears that Rent was behind, and the Diſtreſs lawful, and to which there is no ſufficient Anſwer.

(5) Pratt *verſus* Ratlith. Trin. 13 Will. III. B. R. Vide *this Caſe, Title* Avowry, pl. 6. pag. 95.

REQUEST.

Fitz-Hugh *verſus* Dennington. Mich. 3 Ann. B. R.

Condition to do an Act at the End of ſeven Years upon Requeſt; Requeſt muſt be made on the laſt Day.

DEBT on a Bond, with Condition, reciting, That the Plaintiff was Apprentice to the Defendant for ſeven Years; and that if the Defendant at the End of ſeven Years ſhould procure him to be made free of the Joiner's Company (if requeſted) then the Bond to be void. The Defendant pleaded, That at the end of ſeven Years or afterwards hucuſq; he was not requeſted. The Court held a Requeſt neceſſary, for the Condition was to do a collateral Thing; and as it is part of the Condition it muſt be averred: And here a Requeſt within the ſeven Years, when the Thing was not to be done, ſhall not be intended per Cur'. Afterwards this was moved again by Broderick, who urged, That the Defendant ſhould have pleaded he was not requeſted generally, and that the Requeſt might have been before the End of the ſeven Years. Et per Cur'. 'Tis not to be done poſt finem, but ad finem, and the End of a Thing is always part of that of which it is the End, and he was to be made free the laſt Day of the ſeven Years, and ſhould have requeſted ſome convenient Time in that Day that the other might have a reaſonable Time to do it in. Adjudged on a Writ of Error of a Judgment in the Marſhal's Court for the Plaintiff, and the Judgment reverſed, per totam Curiam.

RESCUE.

Dominus Rex *verſus* Belt. Mich. 8 Will. III. B. R.

(1) Where the Reſcuer ſhall be diſcharged upon Affidavits.

IN the Caſe of a Reſcue there are two Ways of Proceeding: If the Reſcous is returned to the Philazer, and Proceſs of Outlawry iſſues, and the Reſcuer is brought into Court, he ſhall not be diſcharged upon Affidavits; but where upon the Return of a Reſcue an Attachment is granted and the Party examined upon Interrogatories, upon anſwering them he ſhall be diſcharged.

Anonymus. Trin. 12 Will. III. B. R.

(2) Return that the Bailiffs had him in Cuſtody of the Sheriff, and H. reſcued him out of the Cuſtody of the Bailiffs, ill for Repugnancy.

THE Sheriff returned virtute brevis mihi direct' feci Warrant. A. & B. ballivis meis qui virtute inde ceperunt the Defendant & in cuſtodia mea habuerunt quouſq; ſuch and ſuch reſcuſſerunt him, ex cuſtodia ballivorum meorum: And Mr. Eyre moved to quaſh it, and it was quaſhed per Cur'. For per Holt C. J. When the Bailiffs have arreſted the Party, he is in Fact and in Truth in their Cuſtody; but in Law, he is in the Cuſtody of the Sheriff: An Anſwer either Way is good, viz. That he was reſcued out of the Bailiff's Cuſtody, or that he was reſcued out of the Sheriff's Cuſtody; but to ſay he was in the Cuſtody of the Sheriff, and yet reſcued out of the Cuſtody of the Bailiffs, is repugnant.

Anonymus. Hill. 3 Ann. B. R.

(3) Attachment for a Reſcue never granted upon Affidavits.

UPON an Affidavit of a Reſcue, an Attachment was pray'd againſt the Reſcuers, and this was a Reſcue upon meſne Proceſs; but denied; for per Holt C. J. The Reſcue muſt be returned upon the Writ, and the Motion and Attachment founded upon that; but it is never the Courſe to grant it upon Affidavits.

Fine for a Reſcue.

Sir Samuel Aſtry ſaid, it was the conſtant Courſe upon the Return of a Reſcue, to ſet four Nobles Fine upon each Offender, and that he had it from Mr. J. Twiſden. Hill. 11 W. 3. B. R. Vide 2 Jo. 198.

RESTITUTION.

Rex & Regina *verſus* Leaver. Trin. 3 W. & M. B. R.

(1) Writ of Reſtitution lies not againſt any that are not Parties to the Record.

IN an Indictment of Barretry, the Defendant was convict and fined 100 l. which was levied by the Sheriff, and paid into the Hands of the Collectors; afterwards the Judgment was reverſed. Pemberton moved for a Rule for Reſtitution againſt the Collectors. Holt C. J. It cannot be, for they are not Party to any Record here: You ought to ſue out a ſpecial Sci. fa. and make them Parties, as in 1 Cro. 328. but this he alſo doubted, ſaying, this Caſe differed: He put this Caſe: A Recoverer in Ejectment is diſſeiſed, or makes a Feoffment; afterwards the Judgment is reverſed: Will a Writ of Reſtitution lie? He ſaid it would not, becauſe the Diſſeiſor or Feoffee are Strangers to the Record, which Pemberton agreed. If a Feme recover Damages and then marries, and the Judgment is reverſed, Reſtitution lies againſt her and Huſband; but they are Parties: And the Motion was denied.

Dominus Rex *verſus* Toſlin, *& al'*. Hill. 10 Will. III. B. R.

(2) Reſtitution denied upon quaſhing Inquiſition of forcible Entry, Leaſe for Years ſtanding out.

A Motion was made for Reſtitution, upon quaſhing an Inquiſition of forcible Entry; the Caſe was, That the Leſſor arreſted the Leſſee for Rent, and while he was in Cuſtody entered the Houſe under pretence of Forfeiture by a Proviſo in the Leaſe; but the Motion was denied, becauſe here appears a Title ſtanding out, which he ſhall not avoid by ſiniſter Means, but ought to purſue his Remedy by Ejectment according to Law: Otherwiſe, had no Title appeared.

Domina Regina *verſus* Winter. Paſ. 4 Ann. B. R.

(3) Traverſe to Inquiſition of forcible Entry is a *Superſedeas* to Reſtitution.

UPON a Motion made by Mr. Broderick for a Procedendo in a Caſe of an Inquiſition taken by Juſtices of Peace, and a forcible Detainer found, and a Warrant granted by them to reſtore the Poſſeſſion, which was ſuſpended by a Certiorari iſ-

ſued out of this Court, it was ſaid by Holt C. J. That if the Party againſt whom the Inquiſition was found would traverſe the Force, that was always a Reaſon to ſtay Reſtitution; nay, that it had been held a Superſedeas to the awarding Reſtitution, and that it was ſo in Sir Richard Bray's Caſe: There an Inquiſition found a forcible Entry; The Defendant offered immediately before the Juſtice to traverſe the Force, the Juſtice refuſed the Traverſe and granted Reſtitution; and Kelynge C. J. granted Re-reſtitution. He ſaid alſo, that all Inquiſitions of Office are of common Right traverſable; ſo is a Diſtringas proximas villatas, in Caſe of pulling down Hedges in the Night, on the Statute of Weſt. 2. tho' the Statute mentions no ſuch Thing: And if in Caſe of an Inquiſition of forcible Entry taken before a Juſtice of Peace, the Defendant tenders his Traverſe immediately, the Juſtice muſt adjourn to another Day, and award Proceſs to return a Jury. Powell J. ſaid, That in the Caſe in Dyer 122. a Traverſe of the Indictment was held to be a Superſedeas only at Election, but latterly it had been held an abſolute Superſedeas: And he ſaid alſo, That if H. licence another to enter into his Land and take the Profits, 'tis a Leaſe at Will; and if the Licence was for a Year, 'tis a Leaſe for a Year; otherwiſe of a Licence to hunt: And if H. licence another to come upon his Dock, (which was the principal Caſe) and carry on his Trade, 'tis a Leaſe; becauſe 'tis all the proper Profits of a Dock. Note, Trin. 11 W. 3. Rex verſus Scarlet. The ſame Queſtion was, viz. Whether Re-reſtitution ſhould be granted, becauſe the Juſtice had refuſed a Traverſe to an Inquiſition of Forcible Entry, but not reſolved. 1 Sid. 287. 2 Keb. 571. Dy. 122. Sty. 359, 360. were cited.

Anonymus. Paſ. 4 Ann. B. R.

(4) Where the Money recovered in a Judgment appears by Record to be paid, Reſtitution ſhall be without a *Scire facias*; otherwiſe where levied only.

WHERE the Plaintiff has Execution and the Money is levied and paid, and that Judgment is afterwards reverſed; there, becauſe it appears on the Record that the Money is paid, the Party ſhall have Reſtitution without a Scire facias, and there is a Certainty of what was loſt; otherwiſe where it was levied but not paid; there muſt then be a Scire facias, ſuggeſting the Matter of Fact, viz. the Sum levied, &c. But where Judgment is ſet aſide after Execution for Irregularity, there needs no Scire facias for Reſtitution, but an Attachment ſhall be granted upon the Rule for Contempt, if there be not a Reſtitution. Per Holt C. J.

Retorn of Writs.

[*Vide Title* Writs.]

Wilſon *verſus* Laws. Mich. 6 W. & M. B. R.

(1) *Attach. feci* good in a Return.

WILSON brought an Appeal of Murder againſt John Laws for killing his Brother Robert Wilſon, and declared againſt him: The Defendant prayed Oyer of the Writ and Return; and having Oyer, demurred to the Writ and Return, and to the Felony pleaded over, Not guilty: Exception was taken, 1ſt, That the Writ commanded the Sheriff, quod attach. Johannem Laws, &c. And the Sheriff had returned attachiari feci: This they pretended was no Anſwer to the Writ, the Injunction whereof is perſonal; but the Court held it well enough, for the Sheriff was not bound to execute it in Perſon, but might do it by his Bailiffs. Dyer 241. 2 Ro. 457. And what the Bailiffs do by the Sheriff's Warrant, is done by the Sheriff, Nam qui facit per alium, facit per ſe. If he had returned attachiatus eſt, it had been good: Captus eſt is a good Return to a Capias. Kitch. 258. For if there is the Subſtance, it is no Matter for Form, as 1 H. 6. 6. a Scire facias was returned, Scire feci A. B. without adding infra nominat. Yet becauſe it was ſaid to be virtute brevis prædict. prout mihi præcipitur, it was adjudged good.

Surpluſage in Return rejected.

2dly, The Sheriff returned, Ita quod Corpus ejus paratum habeo ubicunq; and it was objected this was Nonſence, and alſo impoſſible. Sed per Cur'. The Return is good without it; 'tis therefore but Surpluſage, which will not vitiate a Writ or Indictment, much leſs a Return, which requires not ſuch Preciſeneſs in Form. 3 Cro. 893. 2 Ro. 460.

See more of this Caſe, Title Appeal, Pl. 2. pag. 59.

Palmer *verſus* Price. Mich. 7 Will. III. B. R.

(2) Proceſs whereon to ground *Teſtatum* is return'd by the Attorney of Courſe.

AN Action was laid in Staffordſhire, and Judgment for the Plaintiff; he ſued out a Fieri facias with a Teſtatum into Worceſterſhire, and now it was moved that this was irregular and ought to be ſet aſide, becauſe no Fieri facias had ever gone into Stafford-

Staffordſhire; and the Sheriff of Staffordſhire made Affidavit that he never returned any Fieri facias in the Cauſe: Sed non allocatur; for the Fieri facias upon which the Teſtatum is founded, is returned of Courſe by the Attorneys themſelves, as Originals are; if you ſearch the File you may find one, and that is ſufficient.

REVERSION.

Abbot *verſus* Burton. Trin. 7 Ann. C. B.

H. ſeiſed of Lands *a parte materna*, limits ſeveral Eſtates with Remainder to the Uſe of his right Heirs. The Heir *a parte materna* ſhall have it, being the ancient Uſe.

J. S. being ſeiſed in Fee of certain Lands deſcended to him a parte materna, covenants to levy a Fine thereof to A. and B. to the Uſe of them and their Heirs, to the Intent that a Common Recovery ſhould be ſuffered againſt the ſaid Conuſees to the Uſe of J. S. for Life, Remainder to his Wife for Life, Remainder to his firſt, ſecond and third Sons in Tail, &c. Remainder to the right Heirs of J. S. The Fine is accordingly levied, and then the Common Recovery is ſuffered againſt the Conuſees of the Fine as Tenants to the Præcipe with Voucher of J. S. Afterwards J. S. and his Wife die without Iſſue, and the Leſſor of the Plaintiff is Heir of J. S. a parte materna, and the Defendant Heir general. This Matter being found upon a Special Verdict in Ejectment, the Queſtion was, Whether this Limitation of the Remainder to the Uſe of the right Heirs of J. S. did create a new Eſtate deſcendible to the Heirs general, or was only the ancient Uſe? And the Reſolution of the Court delivered by Trevor C. J. was for the Plaintiff, that it was the ancient Uſe, and that there was no Difference when upon the Conveyance of an Eſtate, any Part of the Uſe reſults by Implication of Law, and when it is referred by expreſs Declaration to the Party from whom the Eſtate moved; for there is no Reaſon that a greater Alteration ſhould be wrought in a Uſe which a Man by expreſs and plain Words reſerves to himſelf upon a Conveyance of his Eſtate, than when the Law makes a Conſtruction of this Intent to reſerve it, not from expreſs Words, but from other Circumſtances and Preſumptions, which

No difference between expreſs and implied Uſe.

in the Consideration of Law do as strongly and manifestly declare his Mind. And for this was cited the Case of Godbolt and Freestone. 3 Lev. 140. 6.

But the Difference whereby that Case was endeavoured to be distinguished from the Case in question was this: That was upon a Feoffment to the Use of the Feoffor for Life, Remainder to his first, second, and other Sons in Tail, Remainder to the right Heirs of the Feoffor; and adjudged, that this Remainder was to the Heirs of the Feoffor a parte materna, according to the ancient Estate and Use which the Feoffor had before the Feoffment: And the Reason was, because this Remainder of the Use did arise out of the Estates which immediately moved from the Feoffor, and was no more than what the Law would have reserved, if no Use at all had been declared of the Remainder. But in the present Case, the Use limited in Remainder to the right Heirs of J. S. does not arise out of an Estate that moved immediately by that Conveyance from J. S. but out of the Estate of the Conusees who were seised in Fee both of the Estate and Use by the Fine, and did by the Common Recovery convey over that Estate out of which all the new Uses and the Remainder in question arose. To this the Chief Justice said, That the Fine and Common Recovery were both to be taken as one entire Conveyance, consisting of these several Parts, and directed as to the Use of them by the same Covenants. That tho' the Conusees had a Seisin in Fee of the Estate, and Use vested in them by the Fine for a special Purpose, and upon that Seisin the Common Recovery was had, and in strictness the Estate passed by it was her Estate; yet upon Consideration of the whole Conveyance the Estate did originally move from J. S. who was the Conusor of the Fine; and for that reason, if there had been no Limitation at all of this Remainder of the Use upon this Recovery, he took it to be very clear, that so much as remained unlimited should result to the Conusor and his Heirs, and not to the Conusee in whom the Estate was not vested with a Purpose to create him any Interest, but in order to forward and compleat the Conveyance of the Conusor's Estate, which was taken as one Conveyance; then does the Use limited upon the Common Recovery, as properly arise out of the Estate that moved from the Conusor of the Fine, as if he had made a Feoffment or Fine, or any single Conveyance to that Use. Judgment for the Plaintiff.

RE-

REVOCATION.

Hitchins *versus* Baſſet. Trin. 5 W. & M. B. R.

(1) Special Verdict finding a Will of Lands, and that afterwards the Teſtator made *aliud Teſtament.* imports not a Revocation.

IN Ejectment, the Jury found a Special Verdict: That Sir H. Killigrew being ſeiſed in Fee, made his Will, and deviſed his Lands to B. for Life, Remainder to C. in Fee; they find likewiſe that Sir H. Killigrew made aliud Teſtamentum in Writing, but what were the Contents of that Will they don't know: The Queſtion was, if the firſt Will was revoked? Finch argued, That every later Will is not a Revocation, for a Man by one Will may diſpoſe of one Acre, and by another Will of another Acre: So if a Man purchaſe Lands after he has made his Will, he need not make his Will over again, but make another Will as to theſe, Vide Cro. Car. 293. therefore this other Will might be of other Lands and no Revocation, and the aliud Teſtamentum might be no Revocation, but might be conſiſtent. Cro. Eliz. 721. Cro. Car. 24. Levinz contra argued, That Revocations are favoured, becauſe they are in the Nature of Reſtitution to the Heir, and all Reſtitutions are favoured. Vide Dyer 310. Moor 429. 1 Roll. 614. A Deed of Feoffment without Livery, a Bargain and Sale without Inrolment, a Grant of a Reverſion without Attornment will revoke a Will, and yet theſe are void Acts; but the Reaſon is, That it appears now it was not the Teſtator's Intent that it ſhould remain his Will, the firſt Will muſt be ſuppoſed to be perfect and include all; and if a Man claims by Deviſe, he muſt in pleading ſay, that the Teſtator by his laſt Will deviſed, &c. 44 Aſſ. 36. 2 Ric. 2. 3. b. But the Court were of Opinion, That it was no Revocation, and the aliud Teſtamentum might concern other Lands, or no Lands at all, or be a Confirmation of the former: And the Judgment was afterwards affirmed in the Houſe of Lords. Vide Hard. 374. Parl. Caſes 146.

Lugg *verſus* Lugg. Mich. 8 Will. III. B. R.

(2) Will of perſonal Eſtate preſumed to be revoked by Alteration of Circumſtances.

BEFORE a Commiſſion of Delegates. One being ſingle, made his Will, and deviſed all his perſonal Eſtate to J. S. afterwards he married and had ſeveral Children, and died without other Will or Diſpoſition, and now coram Delegatis, of which

Treby C. J. was one, 'twas ruled, That there being ſuch an Alteration in his Eſtate, and Circumſtances ſo different at the Time of his Death from what they were when he made the Will, here was Room and preſumptive Evidence to believe a Revocation, and that the Teſtator continued not of the ſame Mind.

Riots, Routs, and unlawful Aſſemblies.

Dominus Rex *verſus* Ingram *& al'*. Hill. 8 Will. III. B. R.

(1) To Inquiſition of Riot upon View, Sheriff muſt be Party, otherwiſe not, and ſuch Inquiſition is *pro Rege* only.

INGRAM and many others were convicted of a Riot on 13 H. 4. c. 7. before two Juſtices of Peace, together with the Sheriff. Et per Cur'. 1ſt, If the Rioters be convicted on View, the Sheriff muſt be Party to the Inquiſition; but if the Rioters diſperſe before Conviction upon View, the Sheriff need not be Party, for the Juſtices may make the Inquiſition without the Sheriff. 2dly, Such Inquiſition by two Juſtices is pro Domino Rege, and need not be alledg'd capt. pro Domino Rege & corpore Comitatus, as an Inquiſition by a Grand Jury, who inquire as well pro corpore Comitatus as pro Domino Rege. 3dly, If the Juſtices make not Inquiry within a Month after the Riot, they are puniſhable; yet they may enquire after the Month, for the Lapſe of a Month does not determine their Authority, but only ſubjects them to a Penalty.

Dominus Rex *verſus* Heaps. Paſ. 11 Will. III. B. R.

(2) Indictment for a Riot and Aſſault. Acquittal of the Riot is ſo of the Aſſault.

INDICTMENT, That the Defendants riotoſe & routoſe & illicite aſſemblaverunt, & ſic aſſemblati exiſtentes, riotoſe & routoſe inſultum fecerunt in quendam J. Ruſſel, &c. Upon Not guilty, the Jury found two Defendants guilty, and acquitted the reſt: And it was moved in Arreſt of Judgment, that two cannot make

make a Riot, and therefore cannot be guilty of a Riot, and that all are acquitted by this Verdict: On the other Side it was ſaid, That the Aſſault and Battery is charged in the Indictment as well as the Riot; and two Defendants may, as they are found, be guilty of that:

Sed per Holt C. J. A Riot is a ſpecifick Offence, and the Battery is not laid as a Charge of itſelf, but as a Part of the Riot; for the Riotoſe & Routoſe runs thro' all, and is aſcribed to the Battery as well as the Aſſembly. The Conſequence is, That theſe Defendants being diſcharged of the Riot, are diſcharged likewiſe of the Battery; and no Judgment can be given; and Judgment was arreſted.

Domina Regina *verſus* Soley *& al'*. Trin. 6 Ann. B. R.

(3) Unlawful Aſſembly neceſſary to a Riot.

INFORMATION that the Defendant tiel jour & lieu Ballivum & Burgenſes de Bewdley in Guihalda Burgi præd. aſſemblat. ad eligend. ballivum burgi prædict. pro Anno tunc prox' ſequent. deſervitur' in electione prædict. procedere vi & armis clamoribus & vociferationibus illicite riotoſe & routoſe impediverunt. The Defendants were found guilty, and upon Motion in Arreſt of Judgment it was held naught. 1ſt, Becauſe it did not appear that any Right is claimed, nor any ſuch Franchiſe pretended to, ſo that they might be doing an unlawful Act; but if they had ſhewed a Right to this Franchiſe, this might be a Diſturbance to them in the Uſe of it; and to diſturb another in the Uſe of his juſt Franchiſe, is an unlawful Act. Vide 29 E. 3. 18. 'Tis a Treſpaſs. Vide Reg. 94. Aſht. 434. Raſt. 662. 2dly, Becauſe it is not ſaid that the Defendants unlawfully aſſembled; for a Riot is a compound Offence. There muſt be not only an unlawful Act to be done, but an unlawful Aſſembly of more than two Perſons.

Diſturbing H. in the Uſe of his Franchiſe is a Treſpaſs.

Domina Regina *verſus* Soley *& al'*. Trin. 6 Ann. B. R.

(4) Unlawful Act to be done neceſſary to a Riot.

INFORMATION that the Defendants illicite riotoſe & routoſe aſſemblaverunt ad pacem perturband. & vi & armis oſtium cujuſdam Domus vocat. the Guild-hall Burgi de Bewdley, clauſum exiſten. de cardinibus riotoſe & routoſe claverunt. The Defendants were convicted, and upon Motion in Arreſt of Judgment it was held naught, becauſe it did not appear whoſe Houſe it was: If it was the Defendants it was not an unlawful Act. Every Crime muſt ariſe from an unlawful Act. It is ſaid to be vocat. the Guild-hall Burgi, but calling it ſo does not make it ſo: The Guildhall may belong to a private Perſon as well as the Borough. Vide Dy. 68. Yel. 28. 3 Cro. 200. Yet the Chief Juſtice

thought an Aſſembly might meet together with ſuch Circumſtances of Terror as to be a Riot: He called it a Kind of Aſſault upon the People. Vide Hob. 91. 1 Mod. 73. Weſt. Preſid. 149. Lamb. 108. 3 Keb. 623. 1 Ro. Rep. 49.

Domina Regina *verſus* Ellis. 6 Ann. *At* Niſi Prius *in* Middleſex, coram Holt *C. J.*

INDICTMENT againſt four Defendants, for that they did riotouſly aſſemble, and Vi & Armis beat and wound one Ellis. Upon Non cul. it appeared at the Trial, that Ellis who was the Enfield Stage-Coachman driving to London in the Highway, the Defendants, one in a Chaiſe, and the reſt on Horſe-back, over-took him, and that the Chaiſe was over-turned by the Coach, but not through any Fault of the Coachman; but that the Driver of the Chaiſe and his Company taking Offence at it, followed the Coachman and beat him barbarouſly. It was objected upon this Evidence, that this was a Treſpaſs, but not a Riot, becauſe the Company was lawfully aſſembled. Et per Holt C. J. 1ſt, If ſeveral are aſſembled lawfully without any evil Intent, and an Affray happens, none are guilty but ſuch as act; but if the Aſſembly was originally unlawful, the Act of one is imputeable to all.

2dly, If three, or more, are lawfully aſſembled, and quarrelling, all fall upon one of their own Company, this is no Riot; but if it be on a Stranger, the very Moment the Quarrel begins, they begin to be an unlawful Aſſembly, and their Concurrence is Evidence of an evil Intention in them that concur; ſo that it is a Riot in them that act, and in no more. So ruled, and ſo found by the Jury.

(5) If three, or more, aſſemble lawfully, and quarrelling, fall upon one of their own Company, 'tis no Riot; if on a Stranger it is, but in thoſe only who concur.

Rules of Court.

Sir James Butler's *Case.* Mich. 8 Will. III. B. R.

(1) Defeating a Rule of Court by a Stranger, is a Contempt.

UPON a Rule of Reference to Arbitrators, they make an Award for the Plaintiff, and a Stranger by Contrivance defeats the Party of the Benefit of this Award; Per Cur'. It is a Contempt to the Court, and an Attachment shall be granted, for it shall not be in any one's Power to defeat the Rules of this Court, or render them ineffectual.

Anonymus. Mich. 8 Will. III. B. R.

(2) Construed largely.

IF a Man enters into a Rule in B. R. not to sue Execution upon a Judgment, and brings an Action of Debt upon the Judgment, 'tis a Breach of the Rule. Per Cur'.

Gregg's *Case.* Pas. 5 Ann. B. R.

(3) Where an Administrator sues, cannot bring Money into Court.

PER Holt C. J. at the Sittings in Guild-Hall, in an Action by an Administrator: The Defendant cannot bring Money into Court, because the Administrator is not by Law to pay Costs, and Pas. 5 Ann. B. R. in Gregg's Case, an Action was brought by an Executor for Money due to his Testator for Law-business done by him, 'twas moved to bring so much Money into Court, but denied.

H. 2 *Ann.* C. B. Money may be brought into Court: In Covenant for Rent. Debt for Rent. Replevin and Avowry for Rent.

Covenant and Breach for Non-payment of Rent, and for not repairing, &c. 'twas moved to bring in so much for the Rent; and as to the other Breach, that the Plaintiff might proceed as he thought fit. Et per Trevor, All the Judges have agreed, (for he put the Case to Holt C. J.) that it is but reasonable to allow it: That it does not differ from Debt for Rent; for tho' it be Covenant, yet it is a Covenant for Payment of a Sum certain. The same Diversity was taken, between Covenant for a Sum certain, and those incertain, per Holt C. J. Hill. 9 W. 3. B. R. saying it did not differ from an Indebitatus Assumpsit. Et Trin. 12 W. 3. B. R. same Rule.

In a Quantum meruit bringing Money into Court was denied. Hill. 8 W. 3. B. R. But Paſ. 5 Ann. B. R. it was allow'd, ex motione Magiſtri Raymond. *Quantum meruit.*

In Trover for a Horſe, Bridle and Saddle, 'twas moved to bring the Saddle and Bridle into Court; but denied Trin. 2 Ann. B. R. Wilcocks the Attorney's Caſe.

Replevin, Defendant avows for Rent, and Plaintiff admitted to bring it into Court. Hill. 10 W. 3. B. R.

In Ejectment upon an Entry for Non-payment of Rent, the Court ſtaid all Proceedings upon bringing all the Rent into Court, and accepting a new Leaſe and ſealing a Counterpart. Downes verſus Turner. Mich. 8 W. 3. B. R.

In Debt for Rent, 'twas moved to bring ſo much into Court, and Holt C. J. thought it hard; he ſaid he remembred the beginning of theſe Motions; the firſt was to bring in Principal and Intereſt upon a Bond; after that it came to an Indebitat. Aſſumpſit: It has been done in Debt for Rent, but not ſo freely; we do it in Ejectment on a ſpecial Reaſon, viz. becauſe that Action ſubſiſts intirely upon the Rules of the Court. Per Holt C. J. Paſ. 10 W. 3. B. R.

In Debt upon a Bond; Defendant muſt bring in the whole Penalty, or the Court will not ſtay Proceedings. Hill. 9 W. 3. B. R. But ſemble ne poet eſtre without bringing in the whole Money. If the Parties diſpute the Quantum, and there is a Diſpute how much is due, ne poet eſtre referr. Trin. 11 W. 3. B. R.

Elliot *verſus* Callow. Mich. 9 Ann. B. R.

(4) DEFENDANT brought Money, viz. 10l. into Court, and had it ſtruck out of the Declaration: Afterwards the Plaintiff ſuffered a Nonſuit; and the Queſtion was, Whether he ſhould be allowed to take this Money? Et per Cur'. He ſhall; for ſo much the Defendant has admitted to be due, and ſo much he has actually paid him; and if the Cauſe had gone on to Trial, there muſt have been a Verdict for the Plaintiff as to ſo much, for this is admitted to be due and paid down as the Plaintiff's Money; otherwiſe perhaps of Money paid into Court by Way of Tender. If a Man pleads a Tender & uncore Priſt, and pays the Money into Court, and the Plaintiff takes iſſue on the Tender, and it is found againſt him, the Defendant ſhall have the Money. Sty. 388.

(4) Tho' Plaintiff is nonſuit, yet he ſhall have Money brought in upon ſtriking it out of the Declaration.

SCIRE FACIAS.

Pauton *versus* Hall. Trin. 1 W. & M. B. R. Rot. 130.

(1) Judgment against two; *Scire facias* against one, ill.

A Judgment in Debt was recovered against A. and B. and a Scire facias awarded against the Tertenants and the Heir of B. The Sheriff returned a Scire feci as to the Heir, and returned several Persons Tertenants in balliva sua, warned; they appear and plead in Abatement, no Scire facias had been awarded against A. The Plaintiff replied, That he at such a Time sued out a Scire facias against A. and set it forth. This Replication was held naught on Demurrer, for a Scire facias is a judicial Writ, and must pursue the Nature of the Judgment; therefore as the Judgment is joint, so ought the Scire facias, whereas here they are as several independent Suits. 2 Ro. 276. 20 H. 7. 3. Cro. Car. 517.

Return of *Sci. feci* against Tertenants ought to be of all the Tertenants *in balliva sua.*

2dly, The Return is ill, for it should not be, that A. B. and C. are Tenants of Lands in balliva sua, but A. B. and C. are Tenants of all the Lands in balliva sua.

Tully's *Case.* Hill. 6 Will. III. B. R.

(2) Error to reverse a Fine.

IN Error to reverse a Fine, tho' in strictness of Law a Scire feci being returned against the Conusees, is sufficient; yet for fear of Purchasors, and in favour of them, there shall be a Scire facias against the Tertenants.

Hardisty *versus* Barny. Hill. 7 Will. III. B. R.

(3) Where *Scire facias* shall issue on Motion, and where without.

IF a Judgment be above ten years standing, the Plaintiff cannot sue a Scire facias without Motion in Court; if under ten, but above seven, he cannot have a Scire facias without a Motion at side Bar. Note, If after such Motion and Judgment revived by Scire facias, the Defendant dies before Execution, the Plaintiff must sue a new Scire facias, but may have it without Motion, for the Judgment was revived before. Per Cur'.

Anonymus. Trin. 8 Will. III. B. R.

(4) Rule for ſuing out and returning *Scire facias*.

IN C. B. there is but one Scire facias, and upon Nihil returned Execution. In the King's Bench there are two Scire facias's and two Nihils returned, and heretofore both were ſued out together by making the Teſte of the Second as if the Firſt were returned; but now the Court made a Rule that both ſhould not be ſued out together, but the Firſt ſhould be duly returned before the Second ſhould be ſued out, and that the Second ſhould be teſted the Day of the Return of the Firſt.

Lugg *verſus* Goodwin. Mich. 10 Will. III. B. R.

(5) Againſt Principal *in hac parte*, and Bail *in ea parte*.

A Scire facias upon a Judgment againſt the principal Defendant was, in hac parte. Et per Holt C. J. on ſearch of Precedents; Where it is againſt the Defendant himſelf, it ſhould be in hac parte; Where againſt the Bail, in ea parte, and this will reconcile the Precedents.

Anonymus. Trin. 11 Will. III. B. R.

(6) *Scire facias* againſt Bail muſt lie in the Sheriff's Hands a convenient Time.

A Capias ad ſatisfaciendum againſt the Principal in order to charge the Bail muſt lie four Days excluſive in the Sheriff's Office, but there is no ſet Time for a Scire facias: Same Rule laid down Mich. 10 W. 3. B. R. But a Scire facias againſt Bail muſt lie a convenient Time, and the firſt Scire facias may be antedated even in Term-time, per Clarke Secondary. Sed per Holt C. J. It cannot be antedated where it iſſues by Rule of Court.

Goodwin *verſus* Peek. Mich. 11 Will. III. B. R.

(7) Fifteen Days incluſive between *Teſte* of firſt and Return of laſt, ſufficient.

THE firſt Scire facias was teſted the 24th Day of October, and returnable the 31ſt Day of October, the Alias was teſted the ſame Day, returnable the 7th Day of November. Shower objected, there ought to be fifteen Days excluſive between the Teſte of the firſt and Return of the laſt: But the Court held, that here being fifteen Days incluſive, 'twas very well, and the Practiſers agreed it. Vide 2 Jones 228.

Proctor

Proctor *versus* Johnson. Pas. 13 Will. III. B. R.

(8) *Scire facias* lies on a Judgment in Ejectment.

ON a Judgment in Ejectment in C. B. a Scire facias was brought against the casual Ejector, suggesting, that since the Judgment A. and B. ingressi sunt & modo tenent. And on Demurrer, Judgment given quod haberet Execution', and upon this Award of Execution a Writ of Error was brought in B. R. where the Objection was, That a Scire facias lay not on a Judgment in Ejectment, for at Common Law it lay only in real Actions; and the Statute gives it only in personal. Vide 2 Inst. 469. Et per Holt C. J. 1st, At Common Law there was a Scire facias on a Judgment in real and mix'd Actions: It lay on a Judgment in Assise, for the Land was bound by the Recovery, which was a good Title, and there was no other Way to execute the Judgment upon change of Parties, as there was in Case of Judgment for Debt or Damages, where Debt lay on the Judgment.

2dly, The Scire facias may either be general against all Tertenants, or against the Tertenants, naming them.

3dly, That Strangers may falsify, but those that claim under the Judgment are estopped and bound by the Judgment.

Withers *versus* Harris. Mich. 1 Ann. B. R. (Vide *this Case*, *Title* Ejectment, pl. 11.)

(9) Whether *Scire facias* lay in personal Actions before *West.* 2.

IT was said by Holt C. J. I am not satisfied with the Opinion of my Lord Coke on West. 2. that at Common Law no Scire facias lay on a Judgment in a personal Action, till West. 2. for the Words sive alia quæcunq; irrotulata came after contractus and conventiones, and therefore cannot be construed of Judgments, but the Law has been otherwise taken, and I must submit; 'tis plain it lay on a Judgment in Annuity.

Shuttle *versus* Wood. Mich. 2 Ann. B. R.

(10) *Scire facias* against Bail in B. R. must be brought in *Middlesex*, and not elsewhere.

ON a Recognizance taken in B. R. the Scire facias must be brought in Middlesex; for the Recognizances there are not obligatory by the Caption, but by their being entered of Record in the Court: So 'tis of Debt: But on a Recognizance in C. B. the Scire facias may be laid in the County where the Caption was, or in Middlesex where 'tis filed; for 'tis a Record by the Caption and becomes immediately obligatory, and therefore may be brought there; and 'tis also filed at Westminster in C. B. and there remains of Record. Vide All. 12. 1 Cro. 312. Hob. 195.

Adams *and Tertenants of* Savage. Mich. 3 Ann. B. R.

An Administrator brought a Scire facias on a Judgment recovered by his Intestate against H. and the Writ was general against such as were Tenants of the Land of H. at the Time of the Judgment. The Sheriff returned several Tertenants warned; among the rest one A. seised of a Messuage and of a Manor called D. The Tenants appear, and all join in this Plea, viz. That J. S. is seised of the Freehold of the Manor of D. & petunt judicium de brevi, & quod breve ill. cassetur. Et per Curiam, The Plea was held ill, and resolved:

(11) Tertenants return'd for several Parts cannot join in a Plea, which goes to one part only.

1st, That the Tertenants cannot join in this Plea, because they are severally returned, one for one part, and another for another.

2dly, This is pleading a Non-tenure by Implication as to the Manor of D. Now in a Scire facias on a Judgment in Debt, or any personal Action, the Defendant cannot plead Non-tenure generally, because 'tis contrary to the Return of the Sheriff, but he may plead a special Non-tenure in such Case; and so the Law is now after long and great Difficulty settled. 3 Cro. 872. 8 E. 4. 19. 9 H. 5. 11. But in a Scire facias for Execution in a real Action, the Defendants may plead a general Non-tenure; because their Freehold, which is much favoured in Law, is in question.

Where *Non-tenure* may be pleaded generally or specially.

3dly, The Tertenants in this Case may plead there be other Tertenants not named in the same County, and pray Judgment if they ought to answer, quousque the others be summoned, but ought not to pray, quod breve cassetur; for the Court ought never to abate the Writ, but where the Plaintiff can have a better Writ; otherwise if the Writ had been particular in naming the Tenants. Vide 2 Saund. Jeffreyson *versus* Dawson, a good Precedent: And they seemed to doubt whether the Tertenants could plead other Tertenants not warned in another County; and the Chief Justice cited Owen 104. that Tenant for Years may be a good Tenant to plead in Bar to a Scire facias to a personal Action where Damages are recovered, but not in a real Action. Vide Co. Ent. 702. 624. 2 Cro. 506. Cro. El. 740. 2 Saund. 8. Palm. 241. 2 Ro. Rep. 53.

Bail

Ball *verſus Manucaptors of* Ruſſel. Trin. 4 Ann. B. R.

(12) *Scire facias* on Recognizance of Bail aſſigning Breach, that the Defendant did not pay nor render *Priſonæ Mar. Mareſch. noſtræ* ſufficient.

SCIRE FACIAS againſt Bail, ſetting forth, quod cum querens recuperaſſet againſt one Ruſſel, and the Defendants devenerunt plegii, that he ſhould either pay vel ſe reddere priſonæ mareſc. Mareſchal. noſtræ. The Defendant prayed Oyer of the Recognizance; and that was, That he ſhould pay, vel ſe reddere, priſonæ Mareſchalli Mareſchalſiæ Dominæ Reginæ coram ipſa Regina, quo lecto & audit. the Defendant pleaded, that there was no Capias ad ſatisfaciend. returned againſt the Principal; the Plaintiff replied there was a Capias ad ſatisfaciend. and ſet it out; the Defendant demurred: It was objected by Pengelly, That the Oyer given was defective, not ſhewing of what Term the Recognizance was, ſo that it did not appear to warrant the Scire facias, or that it is what the Scire facias is brought upon: That the Capias ſet forth appears to have but four Days between the Teſte and Return, and that there is no Breach aſſigned by the Scire facias, for the Render by the Recognizance ought to be to the Marſhal of the King's Bench Priſon; but the Breach is, That he did not render himſelf Priſonæ Mareſchalli Mareſchalſiæ noſtræ, which is the Priſon of the Palace. Vide 10 Co. 68. b. Theſ. Br. 233. N. Br. 251. J. 5 E. 3. c. 8. and Spelm. Gloſſ. in hoc verbo. To this it was anſwered and reſolved by the Court:

1ſt, That tho' the Oyer be imperfect, yet there is no Variance between the Scire facias and Recognizance, and ſince they agree together, the Recognizance is a ſufficient Ground for the Scire facias; but the Defendant ſhould not have gone on, but inſiſted upon his Want of Oyer.

Eight Days muſt be between the *Teſte* and Return of *Capias ad ſatisfac.* againſt the Principal in order to charge the Bail.

2dly, There ought to be eight Days between the Teſte and Return of the Capias ad ſatisfaciendum againſt the Principal, by the Practice and Courſe of the Court; and if the Defendants had moved for the Irregularity, the Court would have helped them: But in Point of Law, the Proceſs of this Court may be returnable de die in diem, eſpecially into Middleſex; and therefore they ſhall not take Advantage of this which is but an Irregularity, upon Demurrer.

3dly, All other Marſhalſeas were derived from the Earl Marſhal of England, and the Marſhal of the Houſhold is never ſtyled Mareſchallus Mareſchalſiæ noſtræ; and this being a Scire facias on a Recognizance of Bail taken here, the Marſhal here muſt be intended the Marſhal of this Court. Judicium pro quer'.

Attwood *verſus* Burr. Paſ. 5 Ann. B. R.

A Writ of Error was brought upon the Award of Execution on a Scire facias againſt Bail, and thereupon the Record of the Judgment againſt the Principal was alſo returned: It was aſſigned for Error, that the Scire facias was ſued out and proſecuted by J. S. his Attorney, but no Warrant of Attorney entered of Record. It was anſwered, That J. S. appears to have been the Attorney in the principal Cauſe, and in that to have had a Warrant, but the Court reverſed the Judgment; for the Record againſt the Principal need not have been certified upon this Writ of Error, and the Suit againſt the Principal was another diſtinct Suit; therefore there ought to be a particular Warrant of Attorney for this Scire facias againſt the Bail, and this Warrant ought to be entered, not before the Writ ſued, for any Body may ſue out the Scire facias; but upon the Return thereof, for then the Suit commences. (13) Judgment on a *Scire facias* againſt Bail, reverſed for want of Warrant of Attorney.

Anonymus. Paſ. 5 Ann. B. R.

IN the Caſe of the King there need not be any Scire facias after the Year. (14)

Service and Suit.

Tomkins *verſus* Crocker. Paſ. 2 Ann. B. R.

Service by doing Suit to the Court of a Manor twice a Year.

IN Replevin, the Defendant made Conuſance for Fealty, Rent, and Suit of Court, and the Suit of Court was laid to be Suit to the Court of a Manor twice a Year: The Plaintiff confeſſing a Tenure by Fealty and Rent, traverſed the Tenure by Fealty and Rent and Suit to the Court of the Manor twice a Year. The Jury found there was but one Freeholder Tenant of the Manor, and that Time out of Mind an ancient Court had been held before the Steward, and that ſeveral Freeholders, Tenants, did Suit to it, and that the Plaintiff held by the Service of doing Suit ad Cur. Man. præd. bis in anno apud Man. præd. Mr. Raymond objected, That the Court found by the Jury, is not the Court claimed by the Conuſance; for curia Manerii is the Court-Baron, which is incident of common Right, and therefore no Title need be made for it, nay it cannot be preſcribed for; whereas this Court here found is a ſpecial cuſtomary Court, for which he ought to make Title in his Conuſance, and not a curia Manerii. Vide 1 Inſt. 58. 2 Inſt. 99. 1 Inſt. 268. Noy 20. Et per Holt C. J. and Powell J. As a Court of Pie-powders may be to hold Plea of Things out of the Market, and yet is a Court of Pie-powders; ſo may a Court of a Manor be more than a Court for Suitors every three Weeks, and yet be a Court of a Manor: There may be a Manor-Court to be held before the Steward bis in anno. Vide 1 Leon. 316. And it is to enquire of Arrearages of Rents and Services: And the Suit to ſuch Court ſhall be intended by Reſervation before the Statute of Quia emptores terr'. Vide 12 H. 7. 18. One that is not reſiant may be bound to do Suit real; for it ſhall be intended a Suit-Service reſerved on creating the Tenure: And the Court held in the principal Caſe, That the Suit ſet forth in the Conuſance was expreſly found by the Special Verdict.

Seſſions General and Quarter.

The Caſe of the Pariſh of King-Langley. Trin. 11 Will. III. B. R.

A Motion was made to quaſh an Order of Seſſions, becauſe the Juſtices had adjourned the Appeal from one Seſſions to another, and ſo the Determination upon the Appeal was not at the next Quarter-Seſſions: Sed non allocatur: For the Appeal muſt be lodged at the next Quarter-Seſſions; yet when it is lodged, the Juſtices may adjourn it. Per Cur'.

(1) Appeal may be adjourn'd from one Quarter-Seſſions to another.

Inter *the Pariſhes of* Linfield *and* Battle. Paſ. 1 Ann. B. R.

CAPTION of an Indictment at Seſſions was, Seſſio tent. viceſimo & viceſimo octavo die Julii, &c. Et per Holt C. J. It is naught, for tho' a Seſſions may adjourn from one Day to another, and ſo ſit by Adjournment, yet it muſt not appear in a Lump, as ſitting three Days together, but diſtinctly.

(2) Seſſions cannot be entered as ſitting three Days together.

Domina Regina *verſus* Savin. Paſ. 2 Ann. B. R.

AN Order of Seſſions was made, that the Clerk of the Peace ſhould proſecute an Indictment of Barretry found againſt J. S. and that the Charge be allowed out of the County-Stock. Note, By 43 Eliz. c. 2. The Juſtices have Power to diſpoſe of the Surplus to charitable Uſes; upon which Clauſe it was offered to maintain this Order: But the Court ſaid this was not to take Place out of the Surplus, but out of the original Stock; beſides, a Gift of Lands to raiſe Money to proſecute Offenders, would not be good as a charitable Uſe.

(3) Seſſions cannot make an Order to proſecute an Offender out of the County-Stock.

Anonymus. Mich. 2 Ann. B. R.

(4) WHEN a Statute gives a Penalty to be recovered before Juſtices of Peace, and preſcribes no Method, it ought to be by Bill. Per Holt C. J.

Inter *the Inhabitants of St.* Andrew's Holborn *and St.* Clement's Danes. Mich. 3 Ann. B. R.

(5) Seſſions may alter and ſet aſide their own Orders the ſame Seſſions.

UPON a Certiorari the following Orders were removed into B. R. 1ſt, An Order made at the General Quarter-Seſſions of Middleſex, 1704. which recited an Appeal made at the General Seſſions of the Peace for the ſame County in September, 1704. by the Pariſh of St. Clement Danes, againſt an Order of two Juſtices, to remove one Mary Gear from St. Andrew's Holborn to St. Clement Danes, as the Place of her laſt legal Settlement; and that it was thereupon ordered, That the ſaid Appeal ſhould be determined ſuch a Day this Seſſions, and that the Church-wardens, &c. of St. Andrew's Holborn ſhould then attend, and then went on and ordered, That foraſmuch as it appeared to the Court upon Oath, That a Copy of the ſaid recited Order was ſerved upon the Church-wardens, &c. of St. Andrew's Holborn; and for that the Church-wardens, &c. of St. Andrew's Holborn had neglected to attend, the Court allows the Appeal. 2dly, An Order which recited, That whereas the Church-wardens, &c. of St. Andrew's Holborn had then paid in open Court to the Church-wardens of St. Clement Danes 40 s. Coſts allowed to them, becauſe the Church-wardens of St. Andrew's Holborn neglected to attend, upon which the Appeal was allowed, and the Order of the two Juſtices vacated; and then ordered, That for good Reaſons ſhewn unto this Court, It is ordered that the ſaid recited Order of this Court made on Monday laſt, be vacated and diſcharged, and that the ſaid Appeal be reheard. 3dly, An Order ſetting forth, That upon hearing the Appeal of St. Clement Danes, it not appearing that Mary Gear had any legal Settlement in St. Andrew's Holborn, or elſewhere, ſave in St. Clement Danes; this Court doth diſmiſs the ſaid Appeal, confirm the Order of the two Juſtices, and order the ſaid Mary Gear to be continued in St. Clement Danes. Mr. Darnel moved to quaſh the ſecond and third Orders; he argued, That the Hands of the Court were tied up by the firſt Order of Seſſions; ſed tota curia contra; and Holt C. J. ſaid, That during the Seſſions, the Order was in the Breaſt of the Court, and tho' it was drawn up, yet it was ſo far in the Breaſt and Power

of the Court, that by the ſecond Order it ceaſed to be a Record. The Court at the Old Baily have altered and ſet aſide their Judgments ten Times the ſame Seſſions; where Judgment de pain fort & dure has been given, the Court have after let him in to plead, and after upon his Trial he has been convicted, and has had another Judgment againſt him to be hanged: So it is of Judgments here; which during the ſame Term are in the Breaſt of the Judges; but then he ſaid, they ought to ſet the firſt Order wholly aſide, and have entered up the third Order as the only Order; for the Effect of the Court's ſetting aſide of the firſt Order is, That it ceaſes to be an Order, and conſequently ought not to be returned to us as an Order vacated by another Order, but it ſhould have been annulled and made nothing: As in this Court we cannot enter up one Judgment upon Record, and then enter a Vacat of that, and then enter a contrary one: The Seſſions as well as the Term is but one Day in Law. But the Matter was referred to the three puiſne Judges, & ſic quievit.

The Caſe of Foxham Tithing *in* Com. Wilts. Hill. 3 Ann. B. R.

A Juſtice of Peace was Surveyor of the Highway, and a Matter which concerned his Office coming in queſtion at the Seſſions, he joined in making the Order, and his Name was put in the Caption. Et per Holt C. J. It ought not to be; as if an Action be brought by the Chief Juſtice of the Common Pleas in the Court of Common Pleas, the Placita muſt be coram Ed'ro. Nevill Mil. & Sociis ſuis, and not coram Thoma Trevor, &c. and it was quaſhed.

(6) Order of Seſſions quaſhed, becauſe it concerned one of the Juſtices named in the Sryle of Court.

Inter *the Inhabitants of the Pariſhes of* South Cadbury *and* Braddon *in* Com. Somerſet. Mich. 9 Ann. B. R.

ON an Appeal to the Seſſions the Court diſcharged the firſt Order, and now Mr. Earl moved to ſet aſide the Order of Diſcharge, becauſe the Juſtices do not ſay whether they diſcharge it for Form, or on the Merits; for if it was for Form, the Pariſh is not bound, but if on the Merits, the Pariſh in conſequence is hereby diſcharged for ever. Et per Cur'. 1ſt, The Juſtices are not bound to expreſs the Reaſon of their Judgment in the Judgment, no more than other Courts, and if it was otherwiſe held in the late Chief Juſtice's Time, it paſt without due Conſideration. The Reaſon of their Judgment muſt be collected from the Record; as where Judgment is arreſted upon an inſufficient Indictment.

(7) The Seſſions need not ſet forth the Reaſon of their Judgment.

If

If the Sessions reverse the first Order, and that being removed appears to be good, this Court must intend it was reversed on the Merits, and affirm the Order of Sessions.

If the Sessions reverse the first Order, and that being removed, appears not to be good, we must intend it was reversed for Form, and affirm the Order of Reversal.

So if the Sessions affirm the first Order, and that appears to be good, we must affirm the Order of Sessions.

But if the first Order appears bad and the Sessions affirm it, this Court must reverse it, because it appears naught.

SHERIFFS.

Dominus Rex *versus* Daws. Hill. 13 Will. III. B. R.

Sheriff may take Bail-Bond on an Attachment of Contempt, but the Prosecutor may refuse to accept it.

DAWS was taken upon an Attachment for a Contempt die veneris prox post Crastin. Sanctæ Trin', and the Sheriff took a Bail-Bond for his Appearance, and suffered him to be at large: Daws would not appear, the Sheriff was amerced. The Prosecutor refused to accept the Assignment of the Bail-Bond; and Raymond moved, That farther Amerciaments might be stayed, and that the Prosecutor might accept of the Bail-Bond, which was but in 40 l. and the Prosecutor thought it too little: He urged, the Sheriff was bound by the Statute to bail and let him at large, and cannot seize him after the Return; he has done all he can, and ought not to be amerced for not doing more than he can. No Action lies against him in such Case, there ought for the same Reason to be no Amerciament: The Court agreed, That a Bail-Bond may be taken on an Attachment, but said they could not oblige the Plaintiff to accept the Bail-Bond, it might be insufficient; if it was, the Sheriff might thank himself; if it be sufficient, he may by suing the Bail-Bond, re-imburse himself.

Statutes in General, and the Expoſition thereof.

Rex & Regina *verſus* Barlow. 5 W. & M. B. R.

INDICTMENT on 14 Car. 2. c. 12. againſt Church-wardens and Overſeers, for not making a Rate to re-imburſe the Conſtables: Exception was taken, That the Statute only puts it in their Power to do ſo by the Word may, &c. but does not require the doing of it as a Duty, for the Omiſſion of which they are puniſhable: Sed non allocatur; for where a Statute directs the doing of a Thing for the ſake of Juſtice or the publick Good, the Word may is the ſame as the Word ſhall; thus 23 H. 6. ſays, the Sheriff may take Bail; this is conſtrued, he ſhall; for he is compellable ſo to do. (1) Where a Statute directs a Thing of a publick Nature, *may* is underſtood as *ſhall*.

Bennet *verſus* Talbot. Hill. 8 Will. III. B. R. Vide *Title* Declaration, pl. 2. pag. 212. (2)

Mills *verſus* Wilkins. Hill. 2 Ann. B. R.

TRESPASS for taking ſeveral Skins from the Plaintiff: The Defendant as an Officer juſtified on 1 Jac. 1. c. 22. about Tanning, and ſet forth the Title of the Act, miſtaking a Word, by which it varied from the true Title, and averred the Skins were not dreſſed according to the Intent of the Statute; to which it was demurred, becauſe no ſuch Act as is here ſet forth. Vide Cro. Car. 232. 3 Keb. 648. On the other Side it was anſwered, That the Title is no part of the Act; that old Statutes have no Title, and the Opinion of Hale C. Baron was cited. Hard. 324. Vide Hut. 56. Hob. 310. 11 Co. 33. 4 Inſt. 345. Holt C. J. The Title is not a material Part, neither is it neceſſary to ſet it forth; but yet it is a Name given by the Makers, and therefore you muſt deſcribe it accordingly if you will deſcribe it by its Title; and they denied the Opinion of my Lord Hale, ſaying, It was a ſudden Opinion. Judgment for the Plaintiff. (3) Title no part of Statute, but if ſet out wrong, is fatal.

Statutes,

Statutes, and the Expoſition thereof.

Hobbs *qui tam verſus* Young. Trin. 3 W. & M. B. R. Intr. Hill. 1 W. & M. Rot. 129.

Exerciſing a Trade by others is within the Stat. 5 *Eliz.*

DEBT on 5 Eliz. for uſing the Trade of a Clothworker, not being brought up an Apprentice; upon Nil debet the Jury found, That the Defendant was a Turky-Merchant, and exported Woollen-Manufacture into Turky, and that he imployed Clothiers that had ſerved Apprenticeſhip to work the Clothes in his own Houſe, at his own Charge, and with his own Materials, which he ſent into Turky as Merchandize, but that the Defendant never ſerved an Apprenticeſhip. Per Cur'. 1ſt, The Defendant is the Trader in this Caſe, and the Perſon that exerciſes the Trade, becauſe he imploys the reſt, who work but as his Servants, and the Loſs and Gain is to be his.

2dly, This is a Trading within the Statute; becauſe the Cloth is not confined to the Uſe of his own Family, but vended out for the ſake of Commerce, and whether the Utterance be in England or in Turky, is not material.

3dly, That he that hath not ſerved an Apprenticeſhip is by this Statute reſtrained to work as a Trader, either by himſelf or others; for the Intent of this Act is to annex the Benefit of Trade to ſuch as underwent the Hardſhip of Learning it, thereby to encourage Labour in Youth: And few would undergo the Trouble of being Apprentices, if they might employ others to work for them.

4thly, This is a negative Statute, and no one ſhall exerciſe a Trade againſt it, unleſs by Vertue of a Cuſtom, as the Widows of Tradeſmen, who by Cuſtom carry on the Trade of their Husbands, which the Court held not within the Statute. Hutt. 132. Noy 5. 1 Saund. 312. 2 Bulſt. 191. Cro. Car. 516.

Dominus Rex *verſus* Paris Slaughter. Hill. 11 Will. III. B. R.

(2) Indictment for exerciſing the Trade of a Fellmonger contrary to 5 *Eliz.* not quaſhed, becauſe averr'd to be a Trade at the Time of making the Act.

BRODERICK moved to quaſh an Indictment on 5 Eliz. c. 4. for uſing the Trade of a Fellmonger, not having been an Apprentice ſeven Years; he urged, That this was a Buſineſs required no Skill, for it was only to pull the Wool from the Skin. He cited 1 Cro. 499. Information for exerciſing the Trade of a Hemp-dreſſer reverſed. One Paſ. 4 Jac. 2. for exerciſing the Trade of a Woolcomber, quaſhed. Of a Pipping monger reverſed. Sed per Holt C. J. If in the Indictment it be averred to be a Trade at the Time of making the Statute, we will not quaſh it; for whether it was a Trade then or no, or whether any Skill be requiſite to the Exerciſe of it, is Matter of Fact proper for the Trial of a Jury: And there are many Trades within the general Words and Equity of that Act, beſides thoſe that are mentioned therein. The Caſe of a Coſtermonger is not yet determined, and the Caſe of an Upholſterer 2 Bulſt. 186. is not Law. The Court would not quaſh it.

Domina Regina *verſus* Harper. Trin. 4 Ann. B. R.

(3) Where the Trade is averr'd to be a Trade at the Time of the Act, the Court cannot intend it not within it.

INDICTMENT for uſing the Trade of a Merchant-Taylor contrary to the Statute 5 Eliz. Serjeant Broderick moved to quaſh it, becauſe 'tis not a Trade within the Statute. Quaſhed Niſi. Some Days after Mr. Eyre moved to quaſh an Indictment againſt Corniſh, for uſing the Trade of a Seamſtreſs, not having ſerved as Apprentice; and the Court refuſed, becauſe it was ſet forth in the Indictment to be a Trade in England at the Time of making the Act; wherein the Words are, Any Craft, Myſtery or Occupation now uſed. So that if this Trade of a Seamſtreſs be not within the Act, the Defendant would have the Advantage of it upon the Trial. But as to Harper's Caſe, which Mr. Eyre put them in mind of, the Court ſeemed to think a Merchant-Taylor was Nonſenſe and unintelligible, they did not know what a Merchant-Taylor meant, and ſo it differed. It is a good Exception that it is not averred in the Indictment, That the Trade therein mentioned was a Trade at the Time of making the Statute. Domina Regina verſus Corniſh, eodem termino.

Billings *verſus* Eads. Mich. 4 Ann. B. R.

(4) H. may let Coach-horſes and Coachman without a Licence.

TRESPASS and Special Verdict found; the Caſe was, A Gentleman had a Coach and Harneſs of his own, and gave an Inn-holder 100l. per Annum to find him a Pair of Horſes and a Coachman: And the Queſtion was, Whether he could do this without a Licence, to keep a Hackney-Coach, upon 5 & 6 W. & M. c. 22? Et per Cur'. Tho' in the Beginning of the licenſing Clauſe, ſect. 3. and in the prohibiting Clauſe, ſect. 5. Hackney-Coach or Coach-Horſes are mentioned in the Diſjunctive, yet that muſt be underſtood of Coach-Horſes to be uſed with a Hackney-Coach, becauſe all other Proviſions in the Act, viz. the Number, the Fine, the Rent, and the whole Revenue reſerved, is confined to Hackney-Coaches; and the Party cannot forfeit, but where the Commiſſioners may licence; and 'tis an Act of Reſtraint. Judgment for the Defendant.

Anonymus. Mich. 4 Ann. B. R.

(5) Conſtruction of the Stamp-Act.

A Warrant of Attorney for entring up a Judgment was written upon a Paper, which likewiſe contained a Bond, and had only one Stamp, whereas by the Act concerning Stamp-Duties it ought to have two Stamps: Judgment was entered up by Vertue of this Warrant. And now it was moved, That the Judgment and Execution might be ſet aſide for this Cauſe. Sed per Cur'. There may be reaſon to refuſe ſuch a Warrant of Attorney in Evidence, but no reaſon to make all void; for there is nothing in the Act that imports that.

Dunn *qui tam verſus* Hinchdy. Paſ. 5 Ann. B. R.

(6) *Debt. ſur Stat. 10 W. 3. c. 2.*

DEBT upon the Statute 10 W. 3. c. 2. for twelve Dozen of Buttons, made de ligno tantum in Imitation of, &c. The Jury found the Buttons were all Wood but the Shanks, which were Braſs, and that they were made in Imitation, &c. and that there were Buttons made de ligno tantum, &c. Weld ſaid, That now it appeared the Statute was applicable and might have its Effect upon other Buttons, and that a Penal Law was to be conſtrued ſtrictly and not by Intendment. Vide 2 Inſt. 199. Plo. 47. a. But the Court reſolved they were prohibited by the Act; for the Shank is no part of the Button, but added to faſten it: And if Buttons thus made in Imitation, &c. by having a braſs Shank added, ſhould be out of the Act, it would be in every Body's Power to evade it. Adjudged.

Domina Regina *verſus* Maddox. Paſ. 5 Ann. B. R.

PER Cur'. Upon Indictments on the Statute 5 Eliz. in Evidence we allow following the Trade for ſeven Years to be ſufficient without any binding, this being a hard Law. (7) Expoſition of 5 *Eliz.*

Statutes of Hue and Cry.

Aſcomb *verſus The Hundred of* Spelholm. Mich. 2 W. & M. B. R. Intr. Hill. ult. Rot. 901.

AN Action was brought by the Maſter, for the Robbery of A. and B. his Servants: The Jury found the ſpecial Matter, and that B. was a Quaker and would not take the Oath, viz. That he knew none of the Robbers. Et per Cur'. 1ſt, The Maſter may ſue for the Robbery of his Servant, and the Oath of the Servant is ſufficient. 2dly, The Servant may alſo ſue, for he had the Poſſeſſion. 3dly, If the Servant be robbed in the Preſence of the Maſter, the Maſter muſt ſue, and the Oath of the Maſter is ſufficient. Sty. 156. But if the Servant was robbed out of the Maſter's Preſence, the Servant muſt ſwear. 4thly, As to B. who refuſed to ſwear, the Hundred is not liable; for the Statute of Eliz. was made in Favour of the Hundred to prevent Confederacy and Combination between the Thieves and the Party robbed, and 'twas the Maſter's Folly to imploy ſuch a Servant. (1) H. robb'd, refuſing to take the Oath, cannot ſue. Servant robb'd of his Maſter's Goods, Maſter may ſue.

Combs *verſus The Hundred of* Bradley. Paſ. 5 & 6 W. & M. B. R.

IN an Action againſt the Hundred, the Plaintiff declared that he was poſſeſſed ut de bonis ſuis propriis, &c. The Jury found the Plaintiff was a Servant, and was robbed upon the Road (2) Servant robb'd of his Maſter's Money may have an Action againſt the Hundred

of 30l. of his Master's Money, and 20s. of his own. Et per Cur'. The Action well lies by the Servant, for the Money is his, and he is possessed ut de bonis propriis against all, and in respect of all but him that hath the very Right: If a Servant be robbed of his Master's Goods, he may maintain an Appeal of Robbery.

Dowly *versus The Hundred of* Odium. Mich. 6 Will. III. B. R.

(3) Declaration need not set forth the Oath to be taken before a Justice of Peace of the Hundred.

IN an Action upon the Statute of Hue and Cry, a Verdict was for the Plaintiff; and Mr. Clark moved in Arrest of Judgment, That it appeared the Oath was taken before a Justice of Peace of the County, and not a Justice inhabiting within the Hundred, according to 27 Eliz. But the Court held it good notwithstanding that, for the Statute of Winton says no such Thing, and 27 Eliz. does it only by Way of Direction, and the Declaration had been good tho' it had not shewn an Oath taken before any Justice at all.

Cowper *versus The Hundred of* Basingstoke. Hill. 1 Ann. B. R.

(4) Assault in the Hundred of A. and Goods taken in B. B. is chargeable.

IN Debt on the Statute of Hue and Cry, a Special Verdict was found; That the Plaintiff was travelling in the Highway in the Hundred of Michael-River, where he was set upon and carried into the Hundred of Basingstoke, and robbed in a Copse in the Highway of this Hundred: The Question was, Which Hundred should be liable? And it was adjudged, That the Hundred of Basingstoke should, for there the Robbery was committed, and not before; and if these had been two Counties, 'tis certain the Indictment of Robbery must have been brought in the later where the Goods were taken, and not in the first where the Assault was made: Also the Hundred is not liable for not preventing the Robbery, but for not taking the Robbers; for if they are taken, the Hundred is excused. Vide Hutt. 125. Goldsb. 86. It was objected, That the Taking, &c. should relate to the Assault, and so it was a Robbery ab initio, like the Case of Murder, where 'tis certain there shall be a Relation to the Stroke, which was the Cause. In Answer to which the Court took this Diversity. As to Forfeitures there shall be a Relation to the first Cause; so if there be a Pardon of the Stroke, it shall discharge the Murder; but after the Stroke, if one knowing thereof receives him, or if a Constable arrests him and lets him go, the Receiver is not accessary to Felony, nor the Constable a Felon;

How Murder has relation to the Stroke.

for it is not a Felony till Death enſue. 11 H. 4. 12. b. Otherwiſe as to collateral Purpoſes; for if the Stroke and Death are laid at different Days, and the Indictment concludes Et ſic murdravit die & loco of the Stroke, it is naught; but the Day and Place of his dying is well. 4 Co. 41. Plowd. 401. But here the Aſſault is not a neceſſary efficient Cauſe of the Robbery, as a Stroke in Murder is; therefore there is no relation in this Caſe, becauſe no Neceſſity. It was objected, What if one be taken in the Hundred of A. and carried into the Hundred of B. into a Houſe there, viz. a Manſion-houſe, and robbed, or taken in the Day-time in A. and carried to B. and there robbed in the Night, ſhall there be no Remedy? And the Court ſaid thoſe Caſes were not provided for by the Statute. Adjudged per Holt & totam Cur'. Alſo he ſaid as to the Aſſault's being in the Coppice, That it was not neceſſary the Robbery ſhould be in the Highway to charge the Hundred.

Subſidies, Taxes, and Cuſtoms.

Brewſter *verſus* Kitchell. Hill. 9 Will. III. B. R. Vide *the State and Reſolution of this Caſe, Title* Covenant, pl. 4. pag. 198.

(1) Taxes in general means parliamentary.

IN the Debate of this Caſe it was laid down by Holt C. J. That the word Taxes generally ſpoken with reference to a Freehold, or where the ſubject Matter will bear it, ſhall be intended parliamentary Taxes propter excellentiam, 34 H. 8. Quinzin 9. But there be other Taxes not parliamentary, as Repair of Churches, Commiſſion of Sewers; for any Impoſition which takes away part of his Goods or Rent, is a Tax. 2 Inſt. 532.

Different manners of Taxing, and when introduced.

The ancient Way of Taxing was by Tenths and Fifteenths, then by Subſidies, after that by Royal Aids; at laſt by a Pound-Rate: The former were all on the Perſon or perſonal Eſtate, and were much the ſame Thing: The later was upon Rents and Lands.

Tenths

Tenths and Fifteenths were the moſt ancient. Vide Spelman verbo Quindecima. In 8 Ed. 3. a Valuation was made on all the Towns in England, and returned into the Exchequer, which became the ſtanding Meaſure for taxing. 2 Inſt. 76, 77. From this when a Tax was given, the Officers of the Exchequer could eaſily compute what each Town was to be charged with, and what it came to. Vide 11 H. 4. 35. 36 Bro. Quinz. 9.

The firſt Subſidy was in and by 32 H. 8. ca. 50. which was a Tax upon the Perſon for his Lands and Goods, payable by the Party where he lived. This continued till 15 Car. 1.

The Aſſeſſment or Tax, according to a Pound-Rate, came in 17 Car. 1. In theſe Aſſeſſments there was a Clauſe to impower the Tenant to deduct: So it was in 1642, 1644, 1649. And then, and upon this Account it was, that in Conveyances it came to be provided, that there ſhould be no Deduction for Taxes.

Trowell *verſus* Ellford. Trin. 5 Ann. B. R.

(2) H. may be aſſeſſed to the Land-Tax either where he dwells or carries on his Employment.

TRESPASS againſt the Collectors of the Land-Tax; the Caſe was, That the Plaintiff lived in Middleſex, but exerciſed and followed the Buſineſs of a Factor in Smithfield; and the Queſtion was, Whether the Commiſſioners of Middleſex where he lived, could tax him as living in Middleſex, or he ſhould be taxed by the Commiſſioners of London as following his Buſineſs in Smithfield? And Holt C. J. held, That the Action lay, and that he was not taxable by the Commiſſioners of Middleſex; for by the very Words of the Act, he is to be taxed in the Place where his Office is exerciſed: Cæteri Juſtic. contra, for this is not an Office which is local, but an Imployment which is perſonal, and the Perſon is taxable where he lives; and the affirmative Words of the Act are directory: He is taxable in either Place.

Robinſon *verſus* Stephens. Mich. 8 Ann. In Canc.

(3) Where there ſhall be deduction for Taxes out of Annuity, and where not.

IF one covenants to pay an Annuity to J. S. the Covenantor ſhall not deduct for Taxes, for the Charge is on the Perſon of the Covenantor, and not the Land; ſo if H. having a Term for Years, deviſes an Annuity to J. S. and his Heirs, there can be no deduction for Taxes, for the Term for Years is no otherwiſe chargeable with it, than as it is part of the perſonal Eſtate; for it cannot be ſaid to iſſue out of the Term, when in Point of Duration it may continue much longer: So if H. grants an Annuity to J. S. and afterwards ſecures it out of a real Eſtate, there ſhall be no Deduction for Taxes; for the ſubſequent Secu-

rity cannot leſſen the Effect of his former Grant, which in its Creation was Tax-free. Per Cowper Lord Chancellor, at his Houſe.

Paul *verſus* Shaw. Hill. 8 Ann. In Cam' Scacc'.

ASSUMPSIT for 500l. received to the Uſe of the Plaintiff; on Non Aſſumpſit a ſpecial Verdict was found, That King Charles I. gave to J. S. and his Heirs, the Duty of Priſage of all Wines imported, to hold diſcharged of all Aids and Taxes; and the Queſtion was, Whether the Grantee ſhould pay Tunnage for this upon 9 & 10 W. 3? Note, The Duty of Tunnage was firſt impoſed per 12 Car. 2. c. 4. viz. 4l. 10s. on all French Wine, then comes 1 Jac. 2. c. 3. and impoſes 8l. per Tun on French Wine, with a Clauſe, that the Grantee of Priſage ſhould pay the Duty; then comes 7 & 8 W. 3. c. 20. which impoſes 25l. per Tun; after that comes 9 & 10 W. 3. c. 23. which impoſes over and above, a Duty of 4l. 10s. to be levied according as it was by 12 Car. 2. And it was adjudged in the Exchequer, that the Grantee ſhould not pay this Duty of Tunnage: Upon this Error was brought; and it was ſaid for the Grantee, That this was an ancient Royal Revenue, that if the Crown now held it, Tunnage could not be due, the Queen could not pay a Duty of Tunnage out of her own Priſage; that the Grantee claimed under the Crown and ought to have the ſame Privilege and Exemption, the rather becauſe it was granted with this immunity. But per Trevor C. J. and ſeven other Judges in the Exchequer-Chamber, it was anſwered and reſolved, That Immediately on Importation, this Duty of Tunnage attached upon the Wine, and the Grantee receives whatever part he takes for Priſage charged with the Duty; and this muſt be preſumed to be the Intent of the Law; for it cannot be imagined the Law meant to raiſe this Duty on the People to enrich a private Man, which would be the Effect, if he may have his Priſage Cuſtom-free: And the Grantee paid the Tunnage impoſed by all former Laws.

(4) Priſage, an ancient Duty on Goods granted away by the Crown is chargeable with other Duties charged on the ſame Goods while in the Grantee's Hands.

As to the Reaſons on the other Side, they anſwered, If Priſage had remained in the Crown, it could not have paid by reaſon of the Unity of Poſſeſſion, it being abſurd, that the Queen ſhould be chargeable with a Duty to her ſelf; but this Exemption is only perſonal, and the Duty revives when Priſage comes to a Subject, who may pay the Duty to the Crown, as where a Parſon leaſes his Glebe. And as to the Covenant or Clauſe of Diſcharge in the Grant, that could only extend to the Tunnage then in being, which her, tho' King, had himſelf, and not to what he had not, but might be given to his Succeſſors. And the Judgment was reverſed.

SUR-

SURRENDER.

In the Case of Thompson *and* Leach. Hill. 9 Will. III. B. R. (*Which see Title* Remainder, pl. 2.)

Surrender veſts the Eſtate in the Surrenderee without his expreſs Acceptance.

THE Court held, That a Surrender immediately veſts the Eſtate out of the Surrenderor, and veſts it in the Surrenderee; for this is a Conveyance at Common Law, to the Perfection of which no other Act is requiſite, but the bare Grant; and tho' it be true, that every Grant is a Contract, and there muſt be an Actus contra actum, or a mutual Conſent; yet that Conſent is implied; a Gift imports a Benefit, and an Aſſumpſit to take a Benefit may well be preſumed; and there is the ſame Reaſon why a Surrender ſhould veſt the Eſtate before Notice or Agreement, as why a Grant of Goods ſhould veſt a Property, or ſealing of a Bond to another in his Abſence, ſhould be the Obligee's Bond immediately without Notice. 2 Vent. 198. 3 Levinz 284. Shower 130.

TAIL.

Symonds *verſus* Cadmore. Hill. 4 & 5 W. & M. B. R. Rot. 743. Vide *this Caſe, Title* Fines, pl. 3. pag. 338. (1)

Machil *verſus* Clark. Trin. 1 Ann. B. R. Intr. In B. R. Paſ. 12 Will. III. Rot. 342.

(2) Covenant by Tenant in Tail to ſtand ſeiſed to the uſe of himſelf for Life, Remainder to A. in Tail, is void; becauſe the Remainder is to take Effect after his Death.

TENANT in Tail covenanted to ſtand ſeiſed to the Uſe of himſelf for Life, Remainder to John his eldeſt Son in Tail, and afterwards ſuffered a Common Recovery with ſingle Voucher, wherein he was Tenant to the Præcipe: And the firſt Queſtion was, What Operation the Covenant had? For if it made any Alteration in the Eſtate-tail, the Recovery did not bar; and if it did not, the Recovery and ſingle Voucher did bar. The Court held the Recovery good and affirm'd the Judgment; and Holt C. J. delivered the Opinion of the Court, and gave the Reaſons for it, the Sum of which was,

1ſt, That if Tenant in Tail by Covenants to ſtand ſeiſed, or by Leaſe and Releaſe, or Bargain and Sale, conveys to another and his Heirs, 'tis a baſe Fee, not determined nor determinable till the Entry of the Iſſue; for before the Statute de donis, he had a Fee-ſimple; and the Statute does not alter the Nature of the Eſtate, but reſtrain the Power of Alienation; and therefore as he might before the Statute, ſo he may ſince; the Statute only makes it voidable.

Bargainee of Tenant in Tail has a deſcendible Eſtate.

2dly, He has the whole Eſtate in him, and therefore muſt be able to deveſt it, and ſo he ſaid was Seymour's Caſe in Point, viz. Tenant in Tail bargained and ſold, the Bargainee has a deſcendible Fee. This Caſe he held for Law, but denied the Caſe of Took and Glaſcow, 1 Saund. 260. and likewiſe Litt. §. 612. if it be taken literally.

What Conveyances by Tenant in Tail are defeaſible by the Entry of the Iſſue.

3dly, This appears from 3 Coke 84. If Tenant in Tail grants a Rent, Advowſon, &c. 'tis not void as to their Iſſues, but voidable; for if he brought a Formedon, the Defendant may plead a Warranty. Vide Winch 5. Bridg. . this is ſtill more apparent from the common Caſe, where Tenant in Tail makes

a Lease not warranted by the Statute, 'tis not void as to the Issue, but voidable; and Tenant in Tail may exchange with a Tenant in Fee, in which Case a Fee is given and taken without Livery: Ergo, Tenant in Tail may also by Covenant to stand seised. If Tenant in Tail by Lease and Release, by Bargain and Sale, or by Covenant to stand seised, convey to another and his Heirs, the Estate-tail is not in Abeyance, but in the Alienees, for the Law puts nothing in Abeyance, but of necessity; and 'tis not in the Tenant in Tail, for he cannot bring Waste, &c. Vide Hob. 339. Yelv. 51. 1 Leon. 110. 1 And. 191. 3 Cro. 895. But he held that the present Conveyance did produce no Alteration in the Estate-tail, because the Estate in Remainder was to commence after his Death; and took this difference,

If Tenant in Tail make a future Lease for Years, which by Possibility may be to commence during the Life of Tenant in Tail, it is not void, but voidable as to the Issue.

But if it be a future Lease to commence after the Death of Tenant in Tail, 'tis merely void in its Creation; for 'tis not to commence till the Title of the Issue commences, and that is an elder Title concurring with it; and if the Law should make it otherwise than void, the Law would make him a Trespasser. Vide Dy. 279. Pl. 7. 2 Cro. 565.

Tenant in Tail covenants to stand seised to the Use of A. and his Heirs, or A. for Life with Remainders, it devests the Estate-tail; otherwise if the new Use be to take Effect after his Death.

So in Covenant, if one Covenant to stand seised to the Use of A. and his Heirs, or to the Use of A. for Life, Remainder to B. in Fee, the Covenant is not void, but puts the Estate-tail out of the Covenantor.

But if Tenant in Tail covenant to stand seised to the Use of A. and his Heirs after his Death, 'tis void.

So it is in the Case at Bar, Tenant in Tail covenants to stand seised to the Use of himself for Life, Remainder to J. S. and his Heirs; for the Remainder is to take Effect after his Death, when by his Death the Title of the Issue commences, and the Covenant as to the Estate for Life to himself is void in this Case, because here is no transmutation of Possession; such Covenant is in any Case only good in respect of the Remainders, and since the Remainders are void, the Covenant and the first Estate are likewise void.

(3) Surrender to A. for Life, Remainder to A. and his Wife for their Lives, and their Heirs and Assigns; and for Default of such Issue to A. and his Heirs, is a Fee in A. and his Wife.

Idle *versus* Coke. Pas. 4 Ann. B. R.

H. Seised in Fee of a Copyhold, surrendered the same to the Use of himself for Life, and after that to Valentine his Son and Alice his Wife, pro & durante termino vitarum suarum naturalium & hæred. & assignat. prædict. Valentini & Aliciæ. Et pro defectu talis exitus, To the Use of himself and his Heirs: And it was held per totam Curiam.

1ſt, That a Limitation of Uſes in a Copyhold Surrender muſt be conſtrued by the ſame Rules, and in the ſame manner as if it were a Limitation in a Deed of Feoffment, or any other Conveyance at Common Law; and that the Intent of the Party is not ſufficient as in a Will, for the Statute 21 H. 8. leaves the Teſtator at Liberty to expreſs his Intent as he pleaſes; but the Common Law ties up Conveyances to ſet Form and ſet Words.

Surrender to be conſtrued as a Conveyance at Common Law.

2dly, In a Gift in Tail it muſt be limited of what Body the Iſſue is to come; ſo as it may appear by expreſs Words, or ſomething tantamount or equivalent; and therefore a Gift to H. and his Heirs males, or a Gift to H. and his Heirs females, is not an Eſtate-tail; becauſe it is not ſaid, nor does it appear of whoſe Body they are to iſſue. At Common Law this would not have been a Fee conditional; and the Statute de donis does not create Eſtates Tail, but preſerves them: A Fee at Common Law was either abſolute or reſtrained; thoſe reſtrained Fees were either reſtrained as to Duration, as a Gift to A. and his Heirs, while ſuch a Houſe ſtood, &c. which was a baſe Fee; or reſtrained as to what particular Heirs, or of whoſe Body iſſuing ſhould inherit, which was a Fee conditional, and is by the Statute turned into an Eſtate-tail: Ergo, this is a Fee-ſimple at Common Law, and is ſo at this Day; for there are Words to create an Eſtate of Inheritance; but none to reſtrain that to Iſſue or Heirs to the Body of the Party: But a Gift to a Man and the Heirs males of his Body, is an Eſtate-tail; ſo is an Eſtate to Huſband and Wife, & hæredibus de ipſis procreatis, for de ipſis is tantamount; ſo if a Gift be to H. and his Heirs, if he have iſſue of his Body; and if he die without Heirs of his Body, the Remainder to himſelf and his Heirs; for here is an Inheritance created, and it is manifeſt he meant Heirs of his Body, & voluntas donatoris in Charta doni ſui manifeſtè expreſſa de cætero obſervetur, and this is a neceſſary Implication. Jenk. 171. 5 H. 6. 6. So if a Gift be to A. & hæredibus ſuis ſi hæredes de carne ſua habuerit, & ſi nullos hæredes de Carne ſua habuerit, Remainder to the Donor: So if Lands be given to A. & ſi contingat ipſum abire ſine hæredibus de corpore ſuo, Remainder to the Donor, is an Eſtate-tail, per Holt C. J. tho' not given to him and his Heirs. Quære.

In a Gift in Tail it muſt appear of what Body the Iſſue are to come.

Fee abſolute, baſe, reſtrained, conditional.

By what words Tail may be created.

3dly, They agreed Beresford's Caſe, viz. A Feoffment to the Uſe of A. for Life, Remainder to B. and the Heirs males of the ſaid B. lawfully begotten, and for want of ſuch Iſſue lawfully begotten, to, &c. to be an Eſtate-tail; for of the ſaid B. is de dicto B. or ex dicto B. which is ſufficient to denote ex quo corpore; ſo if it were in Latin, remanere prædict. B. & hæredibus de dicto B. or ex dicto B. But if it were in Latin remanere dicto B. & hæredibus ſuis, or hæredibus ipſius & pro defectu talis exitus, Remainder over, it had been no Eſtate-tail.

To B and the Heirs males of the ſaid B. lawfully begotten and for Default, &c. over, is Tail.

4thly, It was agreed per Holt C. J. Powys and Powell Justices, That Valentine and Alice had a Fee-simple, and not an Estate-tail, because the Words, & pro defectu talis exitus import nothing of their dying without Issue; it is not said pro defectu talis exitus de corporibus dict. Valentini & Aliciæ, or de prædict. Valentino & Alicia, but generally, whereas every Heir is the Issue of some Body. If there had been particular Words express'd, as if they die without Heirs of their two Bodies, there might be reason to turn the express Estate of Fee-simple raised into Tail, which cannot be altered upon a bare Implication, the rather in this Case, because of the Word Assigns; for an Estate-tail is not an assignable Estate. 7 Co. 40. Litt. Rep. 344. 1 Cro. 363. 3 Cro. 478. Plowd. 541. 3 Leon. 5. Hob. 32, 37. Ass. 15. 1 Cro. 366. 2 Sid. 41. Gould J. contra, because the Intent of the Party was to create an Estate-tail, and the Word of in English is equal and tantamount to de or ex in Latin.

Of equal to *de* or *ex* in *Latin.*

Tender and Refusal, Amends, &c.

Giles *versus* Hart. Mich. 9 Will. III. B. R.

(1) To a general *Assumpsit*, Tender and Refusal must be pleaded with a *Tout temps prist*, which cannot be after Imparlance.

INDEBITATUS ASSUMPSIT and Quantum meruit, and that being requested at such a Day and Place, the Defendant refused to pay: The Defendant pleaded, That at such a Day before the Request, he tendered, and the Plaintiff refused; and that afterwards he was always ready and tenders the Money into Court: Plaintiff demurred, because the Defendant had imparled, and because it is not pleadable in an Assumpsit, and because here was no Answer to the special Request. Et per Holt C. J. Where the Agreement is to pay at a certain Time, Tender at that Time, and always ready, is a good Plea; but where the Money is due and payable immediately by the Agreement, the Party must plead tout temps prist from the Time of the Promise: But this cannot be after Imparlance, for by that it appears he was not always ready; otherwise if no Imparlance; then he might

might have pleaded tout temps prist notwithstanding the special Request laid in the Declaration, because it was immaterially alledged there; so in Debt, tho' the Plaintiff lay a special Request, the Defendant may plead semper paratus, and pray Judgment de dampnis: And the Plaintiff may reply a special Request to shew the Defendant was not always ready: So in the principal Case: Yet there is a Difference between Debt and Assumpsit; for in Debt the Damages are but accessary; but in Assumpsit are the Principal: Therefore in Debt, the Defendant may plead in bar of the Damages; but in Assumpsit the Defendant ought to plead always ready, with a Profert in Cur. and demand Judgment de ulterioribus dampnis.

In pleading Tender in Debt, Defendant prays Judgment *de damnis*. In Case *de ulterioribus damnis*.

Sweatland *versus* Squire. Hill. 10 Will III. B. R.

(2) *Tout temps prist.*

INDEBITATUS ASSUMPSIT: The Defendant pleaded that before the Action, viz. Such a Day, he tendered the Sum of so much Money, and that he was always after ready, and now is ready, and prays Judgment de dampnis; Plaintiff demurred. Et per Cur'. It is not enough that he was always ready since the Tender; the Money was due before, and the Neglect of Payment was a Delay, a Breach of Contract and a Cause of Action; now here is no Damages for that, but those Damages and all that part of Time remains unanswered, in respect of which the Plaintiff ought to have Judgment. Note, The Counsel for the Defendant said, that Interest was due for the Time unanswered, and Damages would be recobered in respect of that Interest. Quod fuit negatum per Powell J. Interest is recovered by Way of Damages, where Damages are recovered ratione detentionis debiti; but not where Damages only are recovered, for Interest is not recovered occasione dampnorum. Judgment pro quer.

Interest not recoverable where Damages only are recovered.

Lancashire *versus* Killingworth. Trin. 13 Will. III. B. R.

(3) When both Parties meet, Refusal must be shewn.

H. Covenants at two Days Notice to accept 1000 l. Stock at any Time within twelve Months, and to pay 2000 l. on the Transfer; and the Plaintiff shews, That on the second Day of November he gave the Defendant Notice he would be at the Place the Fourth, and that he was there, & obtulit, and that the Defendant was there. Per Cur'. When both Parties meet at the Time and Place, he that pleads a Tender must also plead a Refusal; otherwise such a Plea is naught on Demurrer, but good after Verdict, and if the Defendant be absent, he must shew that, and also that he was at the Time and Place and tendered. Vide 1 Sid. 31. 17 or 7 E. 3. 11. 2 Saund. 350. Peters & Opie.

2dly,

If one comes not, the Pleader must shew when he came, and how long he staid.

2dly, he that pleads a Tender at the Time and Place and no one there to receive, must shew at what Time of the Day he was there, and how long he staid; for he ought to shew that he has done all that could be done on his Part to accomplish what by his Agreement he was bound to do. 6 Co. 114. Yelv. 38. 2 Cro. 13.

Must stay till Sun-set unless special Circumstances shewn vary it.

3dly, The last part of the Day is the Time the Law appoints for a Tender, but it must be Time enough before Sun-set for transacting the Matter which is tendered: Yet in the Case at Bar, wherein there could be no Transfer, but at the Hours of the Company, i. e. from ten to twelve, &c. the Plaintiff must aver the Usage of the Company, and shew that he came accordingly and stayed so long.

Term-time, and Computation.

Anonymus. Mich. 10 Will. III. B. R.

(1) PER Holt C. J. Mr. Justice Twisden used to cite the Book of E. 4. and say, they were to hear no Law the last Day of a Term.

Asmole *versus Serjeant* Goodwin. Trin. 11 Will. III. B. R.

(2) Sundays and Holidays computed for Acts to be done out of Court,

CASE against the Custos Brevium, the Declaration was delivered on Friday Morning and Rules given to plead within four Days, whereas Saturday and Sunday were not juridical Days. Et per Cur'. We reckon them non juridici as to Matters to be transacted in Court, and therefore Sundays and Holidays are no Days to move in Arrest of Judgment. But as to Business done out of Court, as Rules to plead within four Days, &c. Sundays are reckoned the same with other Days.

Sir Robert Howard's *Case.* Trin. 11 Will. III. B. R.
At the Sittings at Guildhall.

(3) Insurance of H.'s Life for a Year. H. died on the last Day; Insurer liable.

A Policy of Assurance was made to insure the Life of Sir Robert Howard for one Year, from the Day of the Date thereof; the Policy was dated on the 3d Day of September 1697. Sir Robert died on the 3d Day of September 1698, about one a Clock in the Morning. Et per Holt C. J. In an Action hereupon it was ruled at the Sittings at Guild-hall: 1st, That from the Day of the Date excludes the Day, but from the Date includes it, so that the Day of the Date is excluded. 2dly, That the Law makes no Fraction in a Day, yet in this Case he dying after the Commencement, and before the end of the last Day, the Insurer is liable, because the Insurance is for a Year, and the Year is not compleat till the Day be over: Yet if A. be born on the third Day of September, and on the second Day of September twenty-one Years afterwards he makes his Will, this is a good Will; for the Law will make no Fraction of a Day, and by Consequence he was of Age.

Allen *versus* Brookbank. Trin. 11 Will. III. B. R.

(4) Citation may be serv'd by fixing on the Church-Door on Sunday.

UPON a Libel in the Spiritual Court for Incontinency, the Citation was served on the Sunday and fixed on the Church-Door, and that was objected to be void, because it is a Process. Vide 22 Car. 2. Holt C. J. That Statute extends not to this Process, nor to summons at the Church; but only to such Process which may as well be executed at any other Time.

Lord Bellamont's *Case.* Pas. 12 Will. III. B. R.

(5) Trial at Bar last Paper-Day.

THE Attorney-General moved for a Trial at Bar last Paper-Day in the Term, in an Action against the Governor of New-York, for Matter done by him as Governor; and granted, because the King defended it.

Sir Christopher Hales *versus* Owen. Trin. 2 Ann. B. R.

(6) Sunday not included in the four Days to move in Arrest of Judgment.

SUNDAY is not included in the four Days to move in Arrest of Judgment, but the Defendant must have four juridical Days.

Parker

Parker *versus Sir* William Moor. Hill. 2 Ann. B. R.

(7) H. may be taken on an Escape-Warrant on Sunday.

ONE was taken on a Sunday by Vertue of an Escape-Warrant, and it was held good; for one may take another on a Sunday upon fresh Pursuit, and this is in the Nature of it, tho' it be by a new Method, for this is no original Process, but the Party is in still upon the old Commitment continued down.

Harvy *versus* Broad. Pas. 3 Ann. B. R.

(8) *Tres Trin.* on Sunday, Writ of Enquiry then returnable, executed Monday; Error.

A Writ of Enquiry was returnable tres Trin. which was Sunday, and the Writ was executed on the the 14th, and that was Monday, which was kept as the Essoin-Day, but was a Day after tres Trin. A Writ of Error was brought. Et per Cur'.

Court takes judicial Notice of Computation of Time.

1st, A Writ may be executed the Day it is returnable but not after. 2dly, The Court may take Notice of this judicially, and there needs no Writ of Error, and no Assignment of this for Error on the Record. So 5 Co. 45. the Court took Notice that the Teste of the Writ of Covenant was after the Return. Vide Co. Ent. 250. Mo. 571. and Plowden, Fish and Brocket's Case, the Court took Notice the Proclamation of a Fine was on a Sunday. 3dly, There was no Difference between moveable and immoveable Feasts; for the moveable Calculation for Easter was made by the Council of Nice, but received in England and made part of the Kalendar, which is established by the Law of England: Therefore, whether the Feast be moveable or immoveable, or whether the Computation is by the Day of the Month or the Day of the Week, viz. Die Lunæ prox. post tres, &c. as 'tis in judicial Proceedings, we have the same Law and the same Rule, and the Court cannot but see and take Notice of what appears to them. Vide 1 Cro. 53. 1 Lev. 196. 1 Sid. 301. Plowd. 265, 266. b. Ro. 524. Dy. 181. Pl. 52. 21 H. 6. 13. Pl. 4. 3 Cro. 227. Lat. 118. 2 Cro. 506, 548. 1 Jon. 301. Stat. de Anno Bissextili. Harvey *versus* Broad. The Judgment was reversed.

Davies *versus* Salter. Mich. 3 Ann. B. R.

(9) Same Point.

A Writ of Enquiry was returnable tres septiman. Trin. which was Sunday the 13th of June, and the Writ appeared to be executed the 14th Day of June. Judgment pro quer'. and Error brought; and Eyre urged, That the Court could not take Notice of the Days of the Month. 1 Cro. 275. Yelv. 140.

1 Ro. 595. Sed non allocatur; then he urged, That Sunday ought not to be reckoned, but Monday in lieu of it. Vide Br. c. 5. 2 Cro. 16. 1 Cro. 11. Et per Holt C. J. If Sunday happen to be the 4to die poſt, the holding of the Term muſt of Neceſſity go over till Monday. So if Sunday happens to be the Eſſoin-Day: And as to the Relation of Judgment, where the Eſſoin-Day is a Sunday, the Judgment can only relate to the firſt judicial Day. All Quinden. Octab. &c. are inclusive: Here we enter die Lunæ, &c. and that is inclusive: In C. B. they enter a die Lunæ, &c. and yet that is inclusive too: But in the principal Caſe there is no Neceſſity; the Writ might have been executed ſooner, or returned at another Day.

TRAVERSE.

Young *verſus* Ruddle. Mich. 7 Will. III. B. R.

(1) *Aſſumpſit*, Satisfaction pleaded. Iſſue taken upon the Acceptance, good.

ASSUMPSIT and Quantum meruit: The Defendant pleaded he gave the Plaintiff a Beaver-Hat in Satisfaction of the Promiſes, and the Plaintiff accepted it in Satisfaction: The Plaintiff Proteſtando, That he did not give it in Satisfaction, traverſes, That he accepted it in Satisfaction; to which it was demurred, 1ſt, It was urged, That this could not be pleaded in Satisfaction of the Promiſes, but ſhould have been of the Damages, like Neal's Caſe, Yel. 192. In Debt upon an Obligation, the Defendant pleaded a Load of Lime given in Satisfaction of the Obligation, and it was held no Plea, for it ought to be pleaded in Bar of the Money due by the Condition. Sed per Cur'. A Releaſe of the Condition would have been no Bar to Debt on the Obligation, but a Releaſe of the Promiſe in the Caſe at Bar had been a good Plea. 2dly, It was urged, That this Traverſe was naught, for if the Gift in Satisfaction be admitted, his Acceptance will not be material. Et per Holt C. J. The Acceptance is material as well as the Gift; to plead a Gift without ſhewing the other received it, would be naught; either is traverſable. Vide Hob. 178. Et per

Rokeby J. The Gift is neither admitted nor confeſſed in this Caſe by the Plaintiff, becauſe there is a Proteſtando to the Gift, ſo that it doth not appear here was any Receipt at all.

Pullen *verſus* Benſon. Mich. 10 Will. III. B. R.

(2) *Non antea* held no Traverſe where further Matter muſt be diſcloſed before he can conclude to the Country.

IN Debt on a Bond, the Plaintiff declared, quod Def. 20 die Novembr. conceſſit ſe teneri, &c. & profert in Cur. ſcriptum prædict. geren. dat. eiſdem die & anno. Defendant pleads, That it was firſt delivered 30 die Novembr. & non antea, and ſhews the Writ, on which he was in Cuſtody, was returnable quinden. Martini, ſo that the Bond was taken after the Return of the Writ, and then relies on the Statute of H. 6. The Plaintiff demurred and had Judgment; and the Court agreed that mere Matter of Suppoſal is not traverſable, no more is Matter alledged out of due Time, no more is Matter immaterially alledged: But they held the 20th Day of November an expreſs Allegation; and that the Defendant's Plea had made it material, for the Validity of the Bond turned wholly upon the Day of the Delivery; upon which reaſon the Defendant ſhould have traverſed its Delivery on the 20th. And the Court held the non antea was no Traverſe, becauſe 'tis that which cannot be reſted upon, but the Party muſt diſcloſe farther Matter before he comes to conclude. Cited Yelv. 138. 2 Cro. 263. 5 H. 7. 26. 2 Keb. 108. 1 Sid. 300. Yelv. 31. But Holt C. J. ſaid, That that Caſe of H. 7. came not up to this Caſe.

Chance *verſus* Weedon. Mich. 13 Will. III. B. R.

(3) *De injuria ſua propria* is a good Replication to a Juſtification by the Common Law or general Statute.

TRESPASS for 200 Buſhels of Salt: The Defendant ſets forth the Act for laying a Duty on Salt 10 W. 3. that it was put on Board to be exported, not being weighed, &c. that he was an Officer, &c. and ſeized it; the Plaintiff replied De injuria ſua propria abſq; tali cauſa; the Defendant demurred. Et per Holt C. J. Where the Defendant juſtifies by Vertue of an Authority by the Common Law, as a Conſtable by Arreſt for Breaking of the Peace, under Proceſs of the Admiralty, &c. de injuria ſua propria is a good Replication; ſo it is, and by the ſame Reaſon, when one juſtifies by an Authority of an Act of Parliament, for being a general Law, the Statute can be no part of the Iſſue. Vide 16 H. 7. 2. 5 H. 7. 6. Co. Ent. 643. A Juſtification upon the Statute de malefactoribus in parcis, and a like Replication; as for the Caſe in Crogat's Caſe of Waſte, and enter pur View, Holt C. J. ſaid it ſtood on a particular Reaſon: Alſo the Court held the Plea ill, becauſe it was not ſhewed what

ſort of Salt this was, Bay-ſalt, Pit-ſalt, White-ſalt, &c. for the Statute does not extend to all. Judgment pro quer'.

Haywood *verſus* Davies, *& al'*. Mich. 1 Ann. B. R. (4)
Vide *this Caſe*, *Title* Abatement, Pl. 10. pag. 4.

WHERE a Traverſe ought to conclude to the Country, and where with an Averment.

White *verſus* Bodinam. Paſ. 3 Ann. B. R.

LESSEE for Years brings Covenant againſt the Leſſor, declaring upon a Demiſe and Covenant for quiet Enjoyment, and aſſigns for Breach, that the Leſſor did enter upon him and ouſt him of the Premiſſes: The Defendant pleads, That he entered to diſtrain for Rent-arrear, abſque hoc that he ouſted him de præmiſſis. To which the Plaintiff demurred, thinking the Traverſe ill, becauſe if he had ouſted him of any part of the Premiſſes, he had a good Cauſe of Action, therefore he ſhould have traverſed abſq; hoc that he ouſted him of the Premiſſes, or of any part thereof. But per Cur. the Plea is well enough in this Caſe, for if the Plaintiff will join Iſſue upon the Matter of the Traverſe, and prove the Ouſter of any part, the Iſſue will be for him: And the Court took a Diverſity between pleading the general Iſſue, as in Debt, you muſt plead Non debet nec aliquam inde parcellam, and a ſpecial Iſſue as this is. 3 Cro. 83, 84. Dyer 115. Judgment for the Defendant.

(5) *Abſque hoc* that he ouſted him *de præmiſſis* goes to every part.

Gilbert *verſus* Parker. Paſ. 3 Ann. B. R.

IN Replevin for taking Cattle, the Defendant made Conuſance, that A. his Maſter was ſeiſed of the locus in quo, and per ejus præcept. he took them Damage-feſant: Plaintiff replied, that he was ſeiſed of one third Part and put in his Cattle, abſq; hoc that the ſaid A. was ſole ſeiſed: To this the Defendant demurred, and Judgment was given againſt him; for the Defendant makes Conuſance under his Maſter as ſole ſeiſed, when he was only Tenant in Common; in which Caſe he ſhould have pleaded according to the Truth, that he was only Tenant in Common, &c. When the Defendant pleads his Maſter was ſeiſed in Fee of the Place where, &c. that muſt neceſſarily be underſtood that he is ſole ſeiſed; and whatever is neceſſarily underſtood, intended and implied, is traverſable as much as if it were expreſſed; and therefore, tho' a Seiſin in Fee be only alledged generally, yet that

(6) Upon pleading a Seiſin general, Traverſe may be taken that he is ſole ſeiſed.

being intended a ſole Seiſin, the Plaintiff may traverſe, abſque hoc that he is ſole ſeiſed; ſince the Plaintiff makes himſelf Tenant in Common with the Defendant, it had not been enough to ſay, That he is Tenant in Common without traverſing the ſole Seiſin.

2dly, The Court held he might either traverſe, abſq; hoc that he was ſole ſeiſed, or that he was ſeiſed modo & forma. Hob. 119. 3 Cro. 795. Winch 7. 2 Mod. 6. Dyer 280. of which the Court doubted, but ſaid there might be Difference between Parceners and Tenants in Common who are ſeiſed per my & per tout. Vide 1 E. 4. 9. 2 Ven. 228. Hutt. 120. Hob. 72. Mo. 863. 37 H. 6. 31. Kel. 27. 1 Leon. 78. 32 H. 6. 2. 6. 21 E. 4. 65.

TREASON.

Rex & Regina *verſus* Geary. Mich. 1 W. & M. B. R.

(1) Attainder of Treaſon reverſed for want of an *Allocutus* before Judgment.

GEARY was attainted of High Treaſon on an Indictment, to which he pleaded Guilty. Upon a Writ of Error brought to reverſe this Attainder, the Exception taken was, That it did not appear he was asked what he had to ſay, why Judgment ſhould not be given againſt him; and all the Precedents are with an allocutus quid, or ſi quid pro ſe dicere habeat, &c. Vide Plowd. 387. Co. Ent. 532. Raſt. 455. And the Court held the Exception good, for he might have Matter to move in Arreſt of Judgment, or a Pardon; and the Attainder was reverſed.

Tucker's *Caſe*. Paſ. 5 & 6 W. & M. B. R.

(2) Judgment in Treaſon reverſed for Want of the Words *contra ligeantiæ ſuæ debitum* in the Indictment.

REGINALD TUCKER brought a Writ of Error to reverſe an Attainder of High Treaſon, upon an Indictment againſt him for the Rebellion in Monmouth's Time: The Indictment was, That the Defendant and another Ligeanciæ ſuæ debi-

tum minime ponderans, did traiterouſly wage War againſt the King verum & naturalem Dominum ſuum contra pacem, &c.

It was held, 1ſt, That the Want of the Words, contra Ligeantiæ ſuæ debitum, ſuppoſing them to be neceſſary, were not ſupplied by the firſt Words, Ligeanciæ ſuæ debitum minime ponderans, &c. for a Man may not conſider his Duty, and yet may not act or offend againſt it: And contra Ligeum ſupremum Dominum ſuum, are not now neceſſary, nor were they anciently uſed. Theſe do not poſitively expreſs, but imply only, That the Defendant acted againſt his Allegiance; and Indictments ſhall not be made good by Intendments. Indictments not to be ſupplied by Intendment.

2dly, Without the Duty of Allegiance there can be no Treaſon, therefore an alien Enemy cannot commit Treaſon; an alien Amy being here may: That for Want therefore of theſe Words, the Crime wants a due Deſcription.

'Tis true, ſome Precedents of Indictments want the Words Contra Ligeanciæ ſuæ debitum. But to theſe the Chief Juſtice ſaid, They were Caſes of Treaſon made by particular Acts of Parliament, and not where the Fact was Treaſon in its Nature; and that in ſuch Caſe 'twas ſufficient if the Indictment purſued the Words of the Statute, and concluded contra formam Statuti, without concluding contra ligeanciæ ſuæ debitum. The Attainder was reverſed.

Charnock's *Caſe*. 7 Will. III. *At the* Old-Baily.

THE Queſtion was at the Trial, Whether Words could be an Overt-Act of Treaſon in compaſſing the Death of the King? For Hale, Placit. Coron. 13. ſays, Words are not an Overt-Act of Treaſon, unleſs ſet down in Writing. Et per Holt C. J. Looſe Words ſpoken without relation to any Act or Project, are not Treaſon: But Words of Perſwaſion to kill the King, are Overt-Acts of High Treaſon; ſo is a Conſulting how to kill the King; ſo if two Men agree together to kill the King; for the bare Imagination and Compaſſing makes the Treaſon, and any external Act that is a ſufficient Manifeſtation of that Compaſſing and Imagining, is an Overt-Act: It was never yet doubted, but to meet and conſult how to kill the King, was an Overt-Act of High Treaſon. Vide Cro. Car. 117. (3) Words of Perſwaſion or Conſultation, an Overt-Act of Treaſon in Compaſſing the King's Death.

Dominus

Dominus Rex *verſus* Walcott. Trin. 7 Will. III. B. R.

(4) Judgment in Treaſon reverſed for want of the Words *ipſo vivente*, or *in conſpectu ejus*, as to burning the Bowels.

WRIT of Error to reverſe a Judgment againſt the Defendant in an Indictment of High Treaſon: The Judgment was, Quod interiora extra ventrem trahentur; but theſe Words, in conſpectu ejus & ipſo vivente comburentur, were omitted: It was agreed, That if this be a neceſſary Part of the Judgment and omitted, the Judgment is erroneous; for the Judgment, in capital Caſes eſpecially, is ſtated, and not arbitrary; and 'twas held that this was a neceſſary Part; for tho' Death is the Ultimum ſupplicium, yet Death inflicted one Way is more ſevere than another, and more formidable; and if this Judgment be right, all other Judgments are wrong, for all others have theſe Words, viz. In conſpectu, &c. Vide 1 H. 7. 24. Br. Coron. 121. Stow's Annals 513. Plowd. 387. Raſt. 545. Staundf. 128. Co. Ent. 422, 423. Harriſon, one of the Regicides, roſe up and ſtruck his Executioner after his Bowels were cut out, which ſhews the Thing is not impoſſible, tho' that be not very material: At another Day 'twas inſiſted, That the Record below was right on an Affidavit, that ſwore, That the Words ipſo vivente were in the Record below, and therefore it was prayed, That the Clerk of the Peace might attend by Rule, which was granted; and upon his Attendance it appeared upon Examination, That the Minutes of the Judgment taken and entered upon the Record of the Indictment had theſe Words in; but Mr. Turner, Clerk of the Peace, ſaid, That Sir Robert Sawyer, then Attorney-General, after the Trial, ſaid, That Uſe was to be made of the Record in Ireland, and therefore examined it before it was tranſcribed, and then this Record which is now certified, was entered at large; ſo that the Queſtion was, which was the Record? Et per Cur'. That which was entered at large is the Record: Then the Counſel moved it might be amended by the Minutes: And Holt C. J. ſaid, That if it were amendable, they could not amend it here; for if a Record in C. B. be erroneous, we cannot amend it here; but upon Diminution alledged here, we grant a Certiorari; but there can be no Diminution alledged at the Old-Baily.

Record of Judgment in Treaſon refuſed to be amended by the Minutes of the Court of *Old-Baily*.

2dly, He queſtioned much if it were at all amendable, and cited Sampſon's Caſe, Jones 421. where the Court were divided, and 'tis there ſaid by Kelynge, That there were no Precedents of any ſuch Amendments: And after the Caſe had been argued ſeveral Times at the Bar, upon the Matter in Law; the Court, Trin. 8 W. 3. unanimouſly, upon ſolemn Arguments, reverſed the Attainder, for want of the Words, ipſo vivente, or in conſpectu ejus.

Cranburn's *Case.* Paſ. 8 Will. III. B. R.

CRANBURN, a natural born Subject of England, was indicted of High Treaſon contra Ligeanciæ ſuæ debitum. It was objected, That it ought to be naturalis Ligeanciæ ſuæ debitum, or contra ſupremum naturalem Dominum ſuum, to diſtinguiſh it from that which is local Allegiance; for there are two ſorts of Allegiance; a natural Allegiance, as that of Subjects; and a local Allegiance, as that of Strangers reſiding here; and this is the Allegiance in the Indictment mentioned. Sed per Cur'. If an Alien be indicted for Treaſon contra naturalem Dominum ſuum, or naturalis Ligeanciæ ſuæ debitum, the Defendant may give in Evidence that he is an Alien, for the Indictment is reſtrained to that Species of Allegiance which is not due; but a Subject may be indicted ſo, or contra Ligeanciæ ſuæ debitum; for Allegiance is the Genus, which being ſet forth, all Species are compriſed under it.

(5) Subject indicted for Treaſon *contra Ligeantiæ ſuæ debitum*, well; otherwiſe if *naturalis, &c.* in the Caſe of an Alien.

The Indictment was, That at ſuch a Time and Place proditorie tractaverunt propoſuerunt & conſultaverunt de viis & modis quomodo Dominum Regem interficerent & conſenſerunt & agreaverunt quod quadragint. homines equeſtres ſhould be provided, &c. for that End.

In Indictments for Compaſſing the King's Death, the Treaſon being firſt laid, the Overt-Act need not be laid *proditorie.*

It was objected, That here are two diſtinct Acts of High Treaſon, and the later is not laid to be done proditorie. Sed non allocatur; for by Mr. Cowper, the Et makes the Whole but as one Sentence; at leaſt it conveys the Force of the Words in the former Sentence to this, and makes it partake of them. Et per Holt C. J. here is but one Treaſon alledged, viz. Compaſſing the Death of the King, and that is ſaid to be proditorie; therefore it need not be repeated again in ſetting forth the Overt-Act, for the Overt-Act is not the Treaſon, but Evidence of the Treaſon. The Treaſon it ſelf lies in Compaſſing, which is an Act of the Mind. Accordingly in the Caſe of the Regicides it was agreed, That the Indictment ſhould not be for killing the King, but for Compaſſing and Imagining his Death, and that the Killing ſhould be alledged as the Overt-Act; for by the Statute the Treaſon conſiſts in the Intention. But if a diſtinct Treaſon, as that of levying War, had been alledged, where the Treaſon conſiſts in the Act and not in the Intention, the Act muſt have been ſaid to be done proditorie; for the Act of levying is a Treaſon, and not an Overt-Act of Treaſon or bare Matter of Evidence.

Otherwiſe where the Treaſon conſiſts in the Act.

Cooke's

Cooke's *Case*. 8 Will. III. *At the* Old-Baily.

(6) Copy of Indictment not granted after pleading.

IN the Indictment againſt Cooke, after the Court was ſate and the Jury called, but not ſworn, Sir Bartholomew Shower of Counſel for the Priſoner made Objections to the Indictment, but it was held right enough; upon that he urged, That then he had not had a Copy, and the Priſoner could not be tried. Et per Cur'. By the Words of the Act he is to demand it, and he has it to enable him to plead, and till then is not to plead. In this Caſe he has pleaded; therefore this Benefit is waived, and the Priſoner has admitted he has a Copy, or did not think it for his Service to require it, but was able to plead without the help of it.

Vaughan's *Case*.

(7) Indictment for Treaſon in levying War, or adhering to the King's Enemies generally, without ſhewing particular Inſtances, not good.

THE Defendant was indicted for Treaſon, in adhering to the King's Enemies, cum pluribus ſubditis Gallicis inimicis Domini Regis, and that they did navigate a certain Veſſel, called Clancarty, with a Deſign to deſtroy the King's Ships. And it was held by Holt C. J. and the other Juſtices at the Trial, That an Indictment for levying War, or adhering to the King's Enemies generally, without ſhewing particular Acts or Inſtances, is not good; for the Words of the Statute are, And thereof be provably attainted by ſome Overt-Deed, which comes after the particulars of Compaſſing the King's Death, levying War, and adhering to the King's Enemies; and it would be Violence to reſtrain them to the firſt Article only without regard to the laſt, to which they are equally connected; if they are to be reſtrained to a ſingle Article, it ought rather to be referred to the Article of adhering only.

And if it be not a good Indictment without ſpecial Acts, &c. the Queſtion is, Whether thoſe that are alledged ought not to be proved, and no others? Et per Holt C. J. A diſtinct Overt-Act cannot be given in Evidence, unleſs it relate to that which is alledged, or conduces to the Proof of it. But if it conduce to prove an Overt-Act alledged, 'tis good Evidence; as if Conſulting to kill the King be alledged, any Actings or Doings in purſuance of that Conſultation, may be proved; for it proves their Agreement and Conſent, and is a farther Manifeſtation of the Act alledged in the Indictment.

It was alſo objected, That in Evidence the Sea-men muſt appear to be French-men born; for if they were Dutch, they are not ſubditi Gallici.

2dly, That tho' he was said to adhere to the King's Enemies, yet it was not said to be against the King.

3dly, That this was not a sufficient Act of adhering, without fighting, or some Act of Hostility. Et per Cur'.

1st, If the States be in Alliance, and the French at War with us, and certain Dutch-men turn Rebels to the States, and fight under Command of the French King, they are Inimici to us, and Gallici subditi: For the French Subjection makes them French Subjects in respect of all other Nations but their own; and if such cruise at Sea, and an English-man assist them, he is a Traitor but not a Pirate; for none are Pirates that act under the Command of a Sovereign Prince.

Joining with Rebel Subjects of the King's Ally, fighting under the Command of an Enemy Prince, is Treason in adhering, &c.

2dly, Adhering to the King's Enemies must of Necessity be against the King; and therefore if an English-man assist the French, being at War with us, and fight against the King of Spain, who is an Ally of the King of England, this is Treason, as adhering to the King's Enemies against the King; for the King's Enemies are hereby strengthened and encouraged, and so is within the express Words of 25 E. 3. of adhering to the King's Enemies, and it is sufficient to alledge the Treason in the Words of the Statute.

Tho' the fighting be directly against an Ally.

3dly, Cruising is a sufficient Overt-Act of Adhering, Comforting and Aiding; as if English-men would list themselves and march, this is sufficient without coming to Battel, and there may be levying War without actual Fighting. Vide Vaughan's Trial.

Cruising is a sufficient Overt-Act.

TRESPASS.

Incledon *versus* Burgeſs. Mich. 1 W. & M. B. R. Intr. Mich. 4 Jac. 2. Rot. 282.

(1) *Contra pacem* is Subſtance.

TRESPASS for Breaking, Entring, and Depaſturing 36 Car. 2. continuando the Depaſturing till 4 Jac. 2. contra Pacem Domini Regis nunc, which was K. James the Second; this was held naught, for then there is no contra Pacem to the Treſpaſs tempore Caroli ſecundi, but it is omitted, and contra Pacem is Subſtance. Vide Cro. Car. 325. Cro. Jacc. 443, 426, 537.

Hore *verſus* Chapman. .... 1 W. & M. B. R.

(2) Declaration in Treſpaſs, *Quare vi & armis, &c.* ill.

IN Treſpaſs the Plaintiff declared, Quare vi & armis clauſum fregit, and after Verdict for the Plaintiff, Judgment was arreſted, for quare is not poſitive but interrogatory, and much worſe than quod cum. Vide 1 Cro. 420. 2 Cro. 47. 2 Bulſt. 214. Godb. 251. 2 Keb. 400. 1 Sid. 326. 3 Cro. 57. 1 Keb. 377.

Wildgooſe *verſus* Kellaway. Trin. 3 W. & M. B. R. Rot. 268.

(3) Declaration in Treſpaſs without *vi & armis*, ill on a general Demurrer.

TRESPASS for breaking his Houſe and taking away his Diſhes; the Defendant juſtified under a By-Law, but that being ill, the Plaintiff demurred; but the Defendant took Exception to the Declaration, becauſe it wanted the Words Vi & Armis; and the Court held it naught on a general Demurrer, being an Omiſſion of the Subſtance; for it alters the Judgment from a Capiatur to a Miſericordia. Item, It belongs to the Juriſdiction of the County-Court, if it be a Treſpaſs without Vi & Armis.

Smith *verſus* Kemp. Trin. 4 W. & M. B. R.

TRESPASS Vi & Armis, for taking Fiſhes ex libera Piſcaria ſua. Upon Not guilty pleaded, and Verdict for the Plaintiff, 'twas moved in Arreſt of Judgment by Carthew, That he that had libera Piſcaria, could not maintain Treſpaſs, and compared it to the Caſe of a Commoner, who could not bring Treſpaſs for a Treſpaſs done in the Common: That libera Piſcaria was not like libera Warrena, for he did allow that he who had libera Warrena might bring Treſpaſs againſt any one but the Owner of the Soil for hunting in his free Warren. 2 Ro. Rep. 55, 111. becauſe libera Warrena was a Liberty to hunt in one's own or another's Ground, excluſive of all others; and that this was granted by the King, who is Maſter of all Games: But libera Piſcaria was only a Freedom of Fiſhing with others, and the ſame with Communis Piſcaria, and for this he cited 1 Inſt. 122. and that ſuch a Grantee had only a Liberty to take Fiſh, and no Property in them, until taken; and ſo prayed that Judgment might be arreſted.

(4) Treſpaſs lies for Fiſhing in *libera Piſcaria*, and taking his Fiſh.

H. who hath free Warren may bring Treſpaſs againſt any, but the Owner of the Soil for hunting here.

Holt C. J. cited and relied upon the Reg. 95. in Point, where there is the ſame Writ, and likewiſe in F. N. B. 15. G. H. 43 E. 3. 11. 6. and ſaid there were three Sorts of Fiſheries. 1. Separalis Piſcaria, and there, he who had the Fiſhery, was Owner of the Soil, and therefore 'tis a good Plea in an Action brought by him, that it is liberum tenementum of another. 2dly, Libera Piſcaria, which is where the Right of Fiſhing is granted to the Grantee, and ſuch Grantee hath a Property in the Fiſh, and may bring a poſſeſſory Action for them, without making any Title. 3dly, Communis Piſcaria, and this was to be reſembled to the Caſe of other Common, and diſallowed the Authority of 1 Inſt. 122. Eyre Juſtice ſaid, That he took 1 Inſt. 122. to be Law, and that many Judgments and Precedents were founded upon that Caſe, and that Libera, ex vi termini, did imply Common, which the Chief Juſtice and Dolben denied in Defence of the Regiſter. Et nota dict. fuit per Carthew in this Caſe, That there were ſeveral Writs there againſt Law, particularly R. 105. Treſpaſs per Baron and Feme for Aſſaulting the Wife and taking the Goods of the Husband.

H. having *libera Piſcaria* hath Property in the Fiſh, and Co. *Lit.* 122. denied.

Gibbon *verſus* Pepper. Paſ. 7 Will. III. B. R.

IN Treſpaſs and Aſſault, &c. The Defendant pleaded that he was riding a Horſe in the King's Highway, and that his Horſe being frightened ran away with him, and that the Plaintiff

(5) Juſtification muſt confeſs the Treſpaſs.

and others were called to, to go out of the Way, and did not; and the Horse ran upon the Plaintiff against his Will, &c. The Plaintiff demurred and had Judgment; not but if the Defendant had pleaded Not guilty, this Matter might have acquitted him upon Evidence; but the Reason of their Judgment was, because the Defendant justified a Trespass, and does not confess it; for if A. beats my Horse, by which he runs on another, A. is the Trespasser, and the Rider is not. And as to Hob. 134. Mo. 864. Placito 1192. 1 Brownl. Precedents 188. they differ, for in them a Battery is confessed.

Ashmead *versus* Ranger. Will. III. B. R.

(6) Trespass by Lessee of a Copyholder for Life, for cutting down by the Lord of the Manor, held maintainable in B. R. and affirm'd in *Cam. Scacc.* but reversed by the Lords.

TRESPASS was brought by Lessee of a Copyholder for Life, for breaking his Close and cutting down his Trees; the Defendant justified as Servant to the Earl of Kent, Lord of the Manor: The Plaintiff replied, That the Copyholder was Tenant for Life, his House in Decay, and that the Trees growing on the Land were not sufficient to repair, &c. Upon Demurrer Holt C. J. held, That 3 Cro. 5. was not Law, and that the Copyholder was Tenant of the Trees as much as of the Land; that the Fruit and the Acorns belonged to the Tenant; and he held, That if H. has all the Thorns in such a Place for Estovers, he may maintain Trespass against any one that cuts them, even his Grantor, and in such Case need not aver that he burnt them. But where H. hath only Estovers to be taken in such a Wood or Place, and the Grantor cuts the Whole, the Grantee may maintain Case against the Grantor, but not Trespass Vi & Armis; and the whole Court held the Action was well maintained by the possessory Right which the Plaintiff had: The Judgment was affirmed in Cam. Scacc. but reversed in the House of Lords; for the Tenant could not cut the Trees, and if the Lord could not, they must rot on the Land; for then no Body could.

Monkton *versus* Pashley. Hill. 1 Ann. B. R.

(7) Trespass for entring his Close and Hunting, laid with a *Continuando*, and held well.

TRESPASS for entring his Close and hunting such a Day continuando transgr. præd. quoad the hunting, diversis diebus & vicibus, from the Day of the Trespass alledged till such a Day. Salkeld urged that this appeared not to be continued; that some Acts were permanent without Intermission or Repetition, which properly lie in Continuance, others not.

2dly, That ſome Acts terminate in themſelves and cannot be repeated, as killing a Dog, when once done it cannot be done again; therefore this cannot be laid with a Continuando. Vide 1 Lev. 200. 2 Ro. Abr. 549. And as to repeatable Acts, where-ever the firſt Treſpaſs is without an Ouſter, there every ſeveral Entry is a diſtinct Treſpaſs and a new Treſpaſs, and not a Continuance of the Firſt; for a Releaſe of the Firſt would not diſcharge the Second. Vide Cro. Jac. 107. Yelv. 126. [which Holt C. J. denied] for the Continuance muſt be anſwered as well as the firſt Act). But where the firſt Entry is with an Ouſter, there every other Act or Entry during the Ouſter is but a Continuance of the firſt Treſpaſs, and a Releaſe of the firſt diſcharges all. Vide 1 Brownl. 223. Cro. El. 210. 1 Lev. 210. compared with 1 Sid. 319. and ſo is F. N. Br. 91. b. to be intended. So is 20 H. 7. 3. 2 Ri. 3. 15. 21 H. 6. 43. Holt C. J. held, That of Acts that terminate in themſelves, and once done, cannot be done again, there can be no Continuando, as Hunting and Killing a Hare or five Hares, but that ought to be alledged, That diverſis diebus & vicibus inter ſuch a Day and ſuch a Day, he killed five Hares, or cut and carried twenty Trees: And where a Treſpaſs is laid in Continuance, that cannot be continued, Exception ought to be taken at the Trial, for he ought to recover but for one Treſpaſs: The Court held, That Hunting might be continued as well as ſpoiling and conſuming his Graſs, or cutting his Graſs; and as to the Caſe of an Entry and Ouſter the Court held, That the Plaintiff being ouſted and having made a Re-entry, might bring Treſpaſs, and declare that he entered ſuch a Day, continuando, &c. or that he entered ſuch a Day & diverſis diebus & vicibus between ſuch a Day and ſuch a Day. And the Plaintiff had Judgment.

Acts that being once done cannot be repeated, cannot be laid with a *Continuando.*

Brook *verſus* Biſhopp. Hill. 1 Ann. B. R.

TRESPASS Quare Vi & Armis the Defendant on the 2d of April, broke and entered his Cloſe, and trod down his Graſs, nec non arbores ſuas, viz. 10 Populos & ſubboſcum ſuum viz. 10 carectatas ſubboſci ſuccidit cepit & aſportavit tranſgreſſiones præd. uſq; 27 Aprilis diverſis diebus & vicibus continuando; and after Verdict and entire Damages, it was reſolved, 1ſt, That the Continuance as to the Poplars and Underwoods, was impoſſible, and could not be.

(8) Treſpaſs in cutting down ſuch a Number of Trees cannot be continued; but a general *Continuando* ſhall be applied to what may be continued after Verdict.

2dly, That no part of the Damages ſhall be intended to be given for that, but ſhall be applied to ſuch Treſpaſſes as may be continued according to 1 Vent. 363. Continuando tranſgr. præd. generally, ſhall only refer to ſo much as lies in Continuance; but if it be continuando ſuch and ſuch Particulars, and they lie not in Continuance, it is naught after Verdict.

Joce

Joce *verſus* Mills. Trin. 2 Ann. B. R.

(9) Treſpaſs *quare duos Equos apud D. in clauſo præd. invent. exiſten & triticum de bonis propriis ipſius* A. *&c. cepit*, does not ſhew the Property of the Horſes.

TRESPASS quare clauſum ſuum apud D. fregit & duos equos apud D. præd. in clauſo præd. invent. exiſten. & Centum congios tritici de bonis propriis ipſius adtunc & ibidem ſimilit. invent. & exiſten. cepit & aſportavit, &c. The Defendant pleaded Not guilty to all but the two Horſes, and as to them a Diſtreſs for Rent; upon which it was demurred, the Iſſue being found for the Plaintiff and contingent Damages intirely given on the Demurrer: And now the Plea being held an ill Plea, Mr. Branthwayte moved in Arreſt of Judgment, That the Horſes were not laid to be the Goods of the Plaintiff; for that it did not follow that they were the Plaintiff's Horſes, becauſe found on the Plaintiff's Cloſe. Vide 2 Cro. 46. Yelv. 36. Equum cepit a Perſona ſua. 2 Lev. 156. 3 Bulſt. 303. Quod fuit conceſſ. Per Cur'.

Plea of taking by Diſtreſs for Rent, does not confeſs Property.

2dly, It was urged and admitted, That the Plea did not confeſs a Property, for the Defendant might diſtrain the Goods of a Stranger for the Rent.

3dly, It was held, That the Copulative Et did not let it into the ſubſequent Part of the other Sentence, ſo as to make the Horſes come under the de bonis propriis, like the Caſe in Raymond 395. Treſpaſs for taking a Mare, ipſius quer. nec non bona & catalla ſequent. nor 2 Saund. 379. which Caſes were allowed; and the Reaſon is, becauſe they are different Sentences, and the firſt is cloſed up by the Place being added: Yet Gould J. agreed the Caſe in 2 Ro. 250. Placito 7. For there by Virtue of the Copulative, the ipſius Quærentis goes to all.

4thly, It was held the Plaintiff could have no Judgment, becauſe the conditional Damages were intire, ſecus if ſeveral.

Ruſſel *verſus* Comb. Mich. 2 Ann. B. R.

(10) WHERE Matter may be laid as Aggravation of Treſpaſs, for which alone Treſpaſs lies not. Vide this Caſe, Title Baron and Feme, Pl. 12. pag. 119.

Day *verſus* Muskett. Mich. 2 Ann. B. R.

(11) Treſpaſs laid in a former King's Time, *contra pacem* of the Preſent, ill on Demurrer, but cur'd by Verdict.

TRESPASS quare Vi & Armis primo die Febr. Ann. Dom. 1701. Clauſum ſuum fregit, and concludes contra pacem Dominæ Annæ nunc Reginæ, &c. The Defendant pleads, That he and another did the Treſpaſs jointly, and that the Plaintiff re-

relaxavit to the other. To that it was replied non eſt factum, to which it was demurred, and Judgment pro Def. for King William died the 8th of March 1701, ſo it was contra pacem Regis, and not contra pacem Reginæ, the Omiſſion of contra pacem had been only Matter of Form, but here it is repugnant, for the Court muſt take Notice of the Demiſe of the King; that is the Deſcription of the Treſpaſs, and a Treſpaſs done contra pacem Regis could not be given in Evidence: Indeed a Verdict would have aided it.

Green *verſus* Goddard. .... Ann. B. R.

TRESPASS, Aſſault and Battery laid on the firſt of October, 3 Reg. The Defendant as to the Vi & Armis, pleaded Non cul. And as to the Reſidue ſays, That long before, viz. on the 13th of September, a Stranger's Bull had broke into his Cloſe, that he was driving him out to put him in the Pound, and the Plaintiff came into the ſaid Cloſe, & manu forti impedivit ipſum ac Taurum præd. reſcuſſiſſe voluit, & quod ad præveniend. &c. ipſe idem Defend. parvum flagellum ſuper querentem molliter impoſuit, quod eſt idem reſiduum, &c. abſq; hoc quod cul. fuit ad aliquod tempus ante eundem 13 Diem. The Plaintiff demurred; Mr. Eyre for the Plaintiff argued, That they ſhould have requeſted him to go out of the Cloſe. 19 H. 6. 31. 11 H. 6. 23. 2 Ro. Treſp. 547, 548, 549. and that flagellum molliter imponere is repugnant. 1 Sid. 4. Laſtly, The Traverſe is ſhort, and no Anſwer to the Time after. 1 Leon. 307. 3 Cro. 87. 1 Ro. Rep. 406. Et per Cur'. There is a Force in Law, as in every Treſpaſs quare clauſum fregit: As if one enters into my Ground, in that Caſe the Owner muſt requeſt him to depart before he can lay Hands on him to turn him out, for every Impoſitio manuum is an Aſſault and Battery, which cannot be juſtified upon the Account of breaking the Cloſe in Law, without a Requeſt. The other is an actual Force, as in Burglary, as breaking open a Door or Gate; and in that Caſe it is lawful to oppoſe Force to Force, and if one breaks down the Gate, or comes into my Cloſe Vi & Armis, I need not requeſt him to be gone, but may lay Hands on him immediately, for it is but returning Violence with Violence: So if one come forcibly and take away my Goods, I may oppoſe him without any more ado, for there is no Time to make a Requeſt.

(12) Where in entring H.'s Cloſe, there is only Force in Law, H. cannot lay Hands on the Treſpaſſor before Requeſt to depart; otherwiſe where there is actual Force.

2dly, Powell J. held, That the Attempt to take and reſcue the Bull was an Aſſault on his Perſon, and a Taking from his Perſon; for if H. is driving Cattle on the Highway, and one comes and takes them from him, it is Robbery, which cannot be without a Taking from his Perſon, quod non fuit negatum. Vide 19 H. 6. 66. 2 Ro. 549. Placito 11. 1 Ro. Rep. 19.

Taking Cattle from H. is a Taking from his Perſon.

3dly,

Where Traverse goes to the Matter, all before is Inducement and waiv'd; otherwise where to Time only.

3dly, They held the quod est idem residuum good without a Traverse, and therefore no Traverse was necessary; [Vide 1 Saund. 8.] and consequently it is no Matter tho' it be short, for here it goes only to the Time; where quod est idem avers it to be the same. Et per Holt C. J. Where a Traverse goes to the Matter of a Plea, &c. all that went before becomes Inducement, and is waived by the Traverse, but where a Traverse goes to the Time only, what was set out in the Plea before, does not become bare Matter of Inducement, nor is it waived by the Traverse. Sed adjournat. Mr. Eyre pro quer. Mr. Brydges pro Def'.

Cockcroft *versus* Smith. Pas. 4 Ann. B. R.

(13) *Son Assault demesne*, a good Plea in Maihem where the first Assault was violent.

IN Trespass for an Assault, Battery and Maihem, Defendant pleaded Son Assault demesne, which was admitted to be a good Plea in Maihem: But the Question was, What Assault was sufficient to maintain such a Plea in Maihem? Holt C. J. said, That Wadham Wyndham J. would not allow it if it was an unequal Return; but the Practice had been otherwise, and was fit to be settled: That for every Assault he did not think it reasonable a Man should be banged with a Cudgel; that the Meaning of the Plea was, That he struck in his own Defence: That if A. strike B. and B. strikes again, and they close immediately, and in the Scuffle B. maihems A. that is Son Assault; but if upon a little Blow given by A. to B. B. gives him a Blow that maihems him, that is not Son Assault demesne. Powell J. agreed, For the Reason why Son Assault is a good Plea in Maihem, is, because it might be such an Assault as indangered the Defendant's Life.

Newman *versus* Smith, *& al'*. Trin. 5 Ann. B. R.

(14) Trespass for entring the Plaintiff's House and Assaulting him. Assaulting and menacing his Servants may be laid by Way of Aggravation.

TRESPASS de eo quod the Defendants tiel jour & ann. apud W. upon the Plaintiff insult. fecer. & ipsum verberaver', &c. Ita quod de vita, &c. & domum ipsius quer. apud W. præd. adtunc & ibidem freger. & intraver. & quer. in quiet. usu & occupatione domus præd. disturbaver. & impediver. necnon in præd. quer. & filium suum & M. N. & R. N. filias præd. quer. & E. N. servam suam minas de verberatione eorum adtunc & ibidem imposuer. & ipsos injuriis & gravaminibus, viz. insult. & affraiis adhunc & ibidem affecer. Et alia enormia, &c. Upon Not guilty it was found for the Plaintiff, and Mr. King moved in Arrest of Judgment upon 2 Cro. 501. that the Master could not maintain Trespass for beating his Servant or Children without special Damage, which ought to be specially shewed: Mr. Eyre answer'd

ſwered, and ſo it was reſolved, That the Action was for the Breaking and Entry, and the farther Deſcription is only to ſhew the Court how enormous that Treſpaſs was; and the Plaintiff could not recover Damages for loſing the Service of his Children or Servant, nor could that be given in Evidence; becauſe the Plaintiff might have a proper Action for that purpoſe: But the Circumſtances mentioned might be proved in Evidence to aggravate Damages for the Defendant's Treſpaſs by breaking and entring. And whereas it was ſaid, ibidem refers to the Will, and it ſhould be in domo prædict. 'tis plain the adtunc ties it to the ſame Time, and then it could not be at a different Place at the ſame Point of Time.

Layton *verſus* Grindall. Paſ. 8 Ann. B. R.

(15) Treſpaſs for entring his Houſe and taking *ſeparal. claves pro apertione oſtiorum domus, &c.* good without ſhewing Number.

TRESPASS for entring the Plaintiff's Houſe and taking ſeparales claves pro apertione oſtiorum domus præd'. Upon Not guilty pleaded, the Plaintiff had a Verdict, and it was objected, that the Taking of each Key was a diſtinct Treſpaſs, and might require ſeveral Anſwers, and the Kind and Number ought to be aſcertained. Vide Playter's Caſe, 5 Co. 34. 1 Ven. 53. 2 Ven. 262. But to this it was anſwered and reſolved, that the Keys are ſufficiently aſcertained by Reference to the Houſe. Vide All. 9. Sty. 43. 1 Ven. 114. 2 Cro. 485.

Anonymus. Paſ. 8 Ann. B. R.

(16) Where the Treſpaſs is tranſitory the Plaintiff cannot pretend a Right to the Place, therefore the Defendant may juſtify by Poſſeſſion only.

TRESPASS for taking his Cattle: The Defendant pleaded that he was poſſeſſed of a Cloſe for a Term of Years, and the Cattle treſpaſſed therein, &c. The Plaintiff demurred, and Judgment was given for the Defendant, tho' he ſhew'd no Title, but juſtified upon a bare Poſſeſſion: And this Difference was taken by Holt C. J. Where the Action is tranſitory, as Treſpaſs for taking Goods, the Plaintiff is foreclosed to pretend a Right to the Place, nor can it be conteſted upon the Evidence, who had the Right; therefore Poſſeſſion is Juſtification enough: But in Treſpaſs quare clauſum fregit it is otherwiſe, becauſe there the Plaintiff claims the Cloſe, and the Right may be conteſted.

TRIAL.

Anonymus. Paſ. 5 W. & M. B. R.

(1) A Cauſe cannot be tried at Bar where the Action is laid in London, by reaſon of their Charter.

Smith *verſus* Bramſton. Mich. 7 Will. III. B. R.

(2) New Trial denied in Caſe for negligently keeping his Fire.

CASE for negligently keeping his Fire, Verdict pro Def. Tho' the Verdict was againſt Evidence, a new Trial was denied, becauſe it is a hard Action: Yet Note, Action againſt the Hundred for a Robbery, Verdict pro Def. and new Trial granted. 1 Sid. 58.

Smith *verſus* Frampton. Mich. 7 Will. III. B. R.

(3) IN Caſe for negligently keeping his Fire, per quod the Plaintiff's Houſe was burnt, the Verdict was for the Defendant: And after great Debate and Conſideration a new Trial was denied; becauſe it is a hard Action, and the Jurors are Judges of the Fact, and yet Holt C. J. declared he was not ſatisfied with that Verdict. Quære whether the ſame Caſe with the Precedent.

Anonymus. Paſ. 8 Will. III. B. R.

(4) THE Court never, or very rarely grant new Trials in Actions for Words. Per Holt C. J.

Smith *verſus* Page. Mich. 8 Will. III. B. R.

(5) No new Trial againſt the Equity of the Cauſe.

IN Ejectment the Plaintiff was a Mortgagee, and claimed by Surrender, whereas the Land was not Copyhold; and the Defendant claimed only by a voluntary Conveyance. The Verdict was for the Plaintiff, and the Court could not ſet it aſide and grant a new Trial againſt the Honeſty of the Cauſe.

Hatchell *verſus* Griffiths. Mich. 8 Will. III. B. R.

ISSUE was joined in Trinity-Term 1695, and Notice then given for Trial next Aſſizes, but no farther nor other Proceeding till Trinity Vacation 1696, and then the Plaintiff gave a new Notice of Trial, viz. fourteen Days Notice for next Aſſizes, when he accordingly tried the Cauſe and had a Verdict, but becauſe there was no Proceeding within a Year after the firſt Notice, it was ſet aſide: Sed Nota, Notice within the Term had been a Proceeding within the Year, and made Notice for fourteen Days good Notice of Trial. (6) Notice of Trial.

Anonymus. Mich. 8 Will. III. C. B.

A New Trial was granted becauſe the Counſel were abſent, not thinking the Cauſe would come on, and no Defence was made; but a like Motion was denied in B. R. per Holt C. J. Alſo in one Coppin's Caſe, A Cauſe came on at ſeven in the Morning, and an old Witneſs could not riſe to be there time enough, but it was denied, unleſs he would make Affidavit of what he knew, and would anſwer ſo that the Court might judge of it, and how it was material. (7) New Trial for the Abſence of Counſel. 2.

Dent *verſus The Hundred of* Hertford. Mich. 8 Will. III. B. R.

A New Trial was granted upon Affidavit, That the Foreman declared the Plaintiff ſhould never have a Verdict whatever Witneſſes he produced. (8)

King *verſus* Burdett. Mich. 8 Will. III. B. R.

A New Trial was mov'd for upon Affidavit, That the Jury took an Act of Common-Council out with them, and that printed Libels were ſpread againſt the Defendant; and it was denied: For as to the firſt it differs from the Lady Ives's Caſe, where they took a Map of one Side, which was Evidence on neither Side: But this was an Act of neither Side, and Evidence on both; but admitted to be irregular. Et per Holt C. J. So if a Jury eat at their own Charge, 'tis fineable, but that Verdict ſhall ſtand; otherwiſe if at the Charge of one of the Parties, and the Verdict is found for him. Vide Mo. 599. (9) Jury after going from the Bar ſent for an Act of Common-Council given in Evidence, and new Trial denied.

Salisbury *verſus* Proctor. Hill. 8 Will. III. B. R.

(10) Trial refuſed to be put off till Suit in the Spiritual Court determined.

IN an Action by an Adminiſtrator the Court was moved to put off the Trial, till a Suit pending in the Spiritual Court concerning the Right of Adminiſtration was determined, which was to come on; which was denied per Cur'. For we cannot take Notice of Suits in the Eccleſiaſtical Courts.

Deerly *verſus The Dutcheſs of* Mazarine. Hill. 8 Will. III. B. R.

(11) New Trial not granted for miſtake in Point of Law againſt the Honeſty and Equity of the Cauſe.

UPON Non Aſſumpſit pleaded, the Jury found for the Plaintiff, tho' the Dutcheſs gave good Evidence of her Coverture; and the Court would not grant a new Trial, becauſe there was no Reaſon why the Dutcheſs who lived here as a Feme Sole ſhould ſet up Coverture to avoid the Payment of her juſt Debts.

Thermolin *verſus* Cole. Hill. 8 Will. III. B. R.

(12) No new Trial for Want of Notice after Defence made.

IF the Defendant appears and makes Defence, he ſhall never have a new Trial for Want of due Notice.

Dominus Rex *verſus* Bear. Paſ. 9 Will. III. B. R.

(13) Indictment for Libel, Defendant acquitted, and new Trial denied.

UPON an Indictment for a Libel, the Defendant was by Verdict acquitted; Mr. Attorney-General moved for a new Trial, but it was denied: And the Court ſaid, that anciently it was never done in criminal Caſes where Defendants have been acquitted; Lately where it has been a Verdict obtained by Fraud or Practice, as ſtealing away Witneſſes, &c. it has been done, but never yet was done merely upon the Reaſon that the Verdict was againſt Evidence. Poſtea Mich. 10 W. 3. B. R. Per Holt C. J. In Indictments of Perjury we never do it, becauſe the Verdict is againſt Evidence; but if you prove a Trick, as no Notice, &c. it is otherwiſe. Vide 1 Lev. 9, 124. Ne ſerra, ſi le def. ſoit acquit alit. s'il ſoit convict.

Turbervil *verſus* Stamp. Mich. 9 Will. III. B. R.

(14) No Motion for new Trial after Motion in Arreſt of Judgment.

He ſhall not move for a new Trial after Motion in Arreſt of Judgment; but after a Motion for a new Trial, he may move in Arreſt of Judgment. So 'tis of a Writ of Enquiry; after Motion in Arreſt of Judgment, the Defendant cannot move for a new Writ. Weſt *verſus* Cole. Mich. 10 W. 3. B. R. The ſame Point was held in C. B. Paſ. 8 W. 3. Phillips *verſus* Crabb.

Starr *verſus* Wade. Paſ. 10 Will. III. B. R.

(15)

Leſſor brought Trover againſt the Leſſee, for Trees cut down, yet becauſe the Leſſee did it in Trenching, and the Plaintiff had thereby greater Advantage, tho' the Jury found for the Defendant, yet the Court would not grant a new Trial.

Wits *verſus* Polehampton. Mich. 10 Will. III. B. R.

(16) New Trial for Omiſſion of the Party refuſed.

It was moved for a new Trial, becauſe the Defendant having pleaded a Compoſition, had forgot to carry down Witneſſes to prove the Subſcriber's Hands; and the Motion was denied, becauſe the Debt was honeſt. And Holt C. J. remembred where Debt on a Bond was brought againſt an Heir, who pleaded riens per Diſcent, but the Verdict went againſt him by omitting to bring the Settlement to the Trial; and the Court being moved, refuſed to grant a new Trial, becauſe it was an honeſt Debt.

Anonymus. Mich. 10 Will. III. B. R.

(17) New Trial or Writ of Inquiry not granted for too ſmall Damages, unleſs where there is a Trick.

In Covenant to pay a Sum certain, viz. 100 l. and a Grant that upon Default it ſhould be lawful for the Covenantee to enter and take the Profits; the Defendant pleaded Entry and Prizal del Profits in Bar, and Judgment was for the Plaintiff upon Demurrer, and upon the Writ of Inquiry the Jury gave Damages, and upon Motion a new Writ of Enquiry was awarded; for Debt might have been brought upon this Covenant; and this is not like an Iſſue where the Jury are to give no more Damages than are proved: But here the Jury are to give the Whole, unleſs the Defendant proves ſomething in Mitigation, which was not done in this Caſe; therefore tho' the common Rule holds, viz. That no new Trial, or new Writ of Enquiry, ſhall be for too ſmall Damages; yet there being a Contrivance in this Caſe, it differs.

Sparks

Sparks *verſus* Spicer. Hill. 10 Will. III. B. R.

(18) New Trial rarely granted in hard Actions.

ONE was ordered by the Judge of Aſſize to be hanged in Chains; the Officer hung him in privato ſolo; the Owner brought Treſpaſs, and upon Not guilty the Jury found for the Defendant, and the Court would not grant a new Trial, it being done for Convenience of Place, and not to affront the Owner.

Lord Sandwich's *Caſe*. Trin. 11 Will. III. B. R.

(19) Trial at Bar, where to be granted or denied.

WHERE there is Value or Difficulty, we are bound of common Right to grant Trials at the Bar. Inquiſitiones de groſſis & pluribus Articulis, quæ magna indigeant examinatione, capiantur coram Juſticiariis de Bancis. Stat. Weſt. 2. c. 30. Per Holt C. J. Yet Trin. 1 Ann. it was denied, becauſe the Plaintiff was poor, unleſs the Defendant would agree to take Niſi prius Coſts. Et poſtea ſcil. Trin. 4 Ann. B. R. Between the Truſtees of my Lady Sandwich and my Lord Sandwich, tho' the Eſtate was 3000l. per Annum, a new Trial at Bar was denied, becauſe the Title of the Leſſor of the Plaintiff being from the Defendant himſelf, there would be nothing to do but to prove the Executing of a Conveyance.

Argent *verſus Sir* Marmaduke Darrell. Hill. 11 Will. III. B. R.

(20) New Trial after Trial at Bar refus'd in Ejectment, becauſe not concluſive.

IN Ejectment after a Trial at Bar, Serjeant Wright moved for a new Trial, becauſe the Verdict was contrary to Evidence; the Court thought ſo too. Rookesby was for it on the Caſe in Style, cæteri contra; for per Holt C. J. The Reaſon of granting new Trials upon Verdicts againſt Evidence at the Aſſizes is, becauſe they are ſubordinate Trials appointed by Weſt. 2. c. 30. Ubi de paucis Articulis & facilis eſt examinatio. And there have been new Trials anciently, as appears from this: That it is a good Challenge to a Juror, that he hath been a Juror before in the ſame Cauſe; but we muſt not make our ſelves abſolute Judges of Law and Fact too; and there never was a new Trial after a Trial at Bar in Ejectment, but in Caſe of ill Practice, for the Plaintiff may bring a new Ejectment: Upon this a new Trial at Bar was denied in Sir Richard Temple's Caſe, where the Jury found a Point of Law on the Statute of Bankrupts, againſt the Opinion of the Court.

Anonymus. Hill. 11 Will. III. B. R.

(21) IN Aſſumpſit for Money won at Play, the Trial ſhall not be ſtayed till an Indictment pending for the Cheat be tried.

Anonymus.

(22) Trial not put off for Suit pending in the Eccleſiaſtical Court on the ſame Matter.

IN Aſſumpſit the Iſſue was, married or not married, and the ſame Point was pending and ready to be determined in the Spiritual Court: And it was held no Cauſe to put off the Trial, for the Court cannot take Notice of that.

Turner *verſus* Barnaby. Paſ. 1 Ann. B. R.

(23) When Trial at Bar to be moved for.

IF H. would have a Trial at Bar in Eaſter-Term, he ought to move for it in Hillary-Term; if in Michaelmas-Term, he ought to move for it in Trinity-Term, except where Lands lie in Middleſex; and anciently there was no other Notice given of ſuch Trial, but the Rule in the Office; but now there muſt be fifteen Day's Notice. Per Holt C. J.

Anonymus. Mich. 1 Ann. B. R.

(24) New Trial for Miſdirection.

A New Trial ſhall be granted if the Judge of Niſi prius miſdirect the Jury, becauſe thoſe Trials are ſubject to the Inſpection of the Court. Per Holt C. J.

Clerk *verſus* Udall. Mich. 1 Ann. B. R.

(25) New Trial for exceſſive Damages, and the ſame Damages given, and third Trial refuſed.

UPON a Trial at Niſi prius the Jury gave exceſſive Damages, and for this Cauſe a new Trial was granted. The ſecond Jury gave the ſame Damages again, and a ſecond new Trial was moved for and denied, becauſe there ought to be an End of Things; but ſeveral Caſes were cited which the Chief Juſtice allowed, That where upon the ſecond Trial the Jury have doubled the Damages, a third Trial had been granted.

The

The Case of the Mayor and Aldermen of Briſtol. Mich. 1 Ann. B. R.

(26) IT was held by the Court that a new Trial cannot be granted in an inferior Court; for they are not like Trials by Niſi prius, which are ſubordinate upon Writs iſſuing out of this Court, over which the Court have Authority and Inſpection; but this was a new Trial a Year after the firſt, which the Court blamed.

Fenwick *verſus Lady* Groſvenor. Hill. 1 Ann. B. R.

(27) New Trial denied after Trial at Bar. IN Ejectment after a Trial at Bar a new Trial was moved for on Affidavits that ſeveral Witneſſes abſented themſelves in Holland by reaſon of a Report ſpread abroad there, that one of the Defendant's Witneſſes was confined by Impriſonment; but it was denied, becauſe it did not appear that the Plaintiff did ſpread it, or occaſioned the ſpreading of it: The Court was diſſatisfied with the Verdict, but cited Croſs's Caſe for a falſe Return of a Mandamus tried at Bar, and by Conſent of all Sides one Point was to be found Specially, yet the Jury found a general Verdict, and the Court would not grant a new Trial. It has never been done here but upon Iſſues out of Chancery, which being only to ſatisfy the Conſcience of the Chancellor, are not ſtricti Juris. So a new Trial was denied, contra opinionem (ut videbatur) Capital. Juſticiar'.

Aſhwin *verſus* Corbill. Mich. 2 Ann. B. R.

(28) A Term's Notice. IF a Cauſe hath lain at Iſſue four Terms and no Proceeding, there muſt be a full Term's Notice of Trial, excluding the Term wherein Iſſue was joined.

Lazall *verſus* Dyer. Mich. 2 Ann. B. R.

(29) Suing out a *Venire facias* teſted the laſt Day of the Term, not a Proceeding within Term as to Notice of Trial. IT came to be a Queſtion, Whether the ſuing out of a Venire or Diſtringas after the Expiration of the four Terms, was a Proceeding within the Term? Becauſe it bears Teſte the laſt Day of the Term, and has Relation to the Term; and the Court held it was not; for tho' it be legally a Proceeding of the Term, yet it is not ſo in Fact. Et Nota, Where 'tis an Iſſue out of Chancery, Notice of Trial to the Solicitor in that Court is good; for as to this, they are but as one Court.

Sir Samuel Aſtry's *Caſe.* Hill. 2 Ann. B. R.

UPON a Scire facias brought againſt Sir Samuel Aſtry, for his Place of Clerk of the Crown in the Court of King's Bench, and Iſſue joined thereupon; Sir Samuel Aſtry moved that the Iſſue might be tried at the Bar. The Attorney-General oppoſed it; but the Court ſaid a Trial at Bar was never denied to any Officer of the Court, nor hardly to any Gentleman at the Bar: And tho' Mr. Attorney was never bound to conſent to a Trial by Niſi prius in the Queen's Caſe, yet they did not ſee how he could refuſe a Trial at Bar where it was reaſonable to try it there; for the Stat. Weſt. 2. cap. 3. is atterminentur, that they may be determined there, qui magna indigeant examinatione.

(30) Trials at Bar not denied to Officers of the Court, or Barriſters.

Way *verſus* Yally. Trin. 3 Ann. B. R.

LESSOR brought Debt for Rent againſt his Leſſee, upon a Demiſe at London, of Lands in Jamaica. The Defendant pleaded to the Juriſdiction of the Court, That the Matter ought to be tried in Jamaica; and it was urged that the Leſſor cannot bring Debt here againſt the Aſſignee of a Term of Lands in Ireland, and that if Entry and Ouſter were pleaded, it could not be tried here; and in this Caſe the Right of the Plaintiff and Defendant depends on foreign Laws which cannot be given in Evidence here. Et per Cur'. Where an Action is local it muſt be laid accordingly; therefore if the Leſſor declares on the Privity of Eſtate, and that lies in Ireland, the Action muſt be brought there, for the Eſtate is local; therefore ſuch Leſſor cannot maintain Debt here againſt an Aſſignee of a Term in Ireland; for the Action is founded on a Privity of Eſtate: Otherwiſe where it is founded on a Privity of Contract, which is tranſitory, as Debt for Rent by Leſſor againſt Leſſee; for that may be maintained where the Land lies not. Here it is by the Leſſor againſt the Leſſee on the Privity of Contract; and if a foreign Iſſue, which is local, ſhould happen, it may be tried where the Action is laid; for that Purpoſe there may be a Suggeſtion entered on the Roll, That ſuch a Place in ſuch a County is next adjacent, and it may be tried here by a Jury from that Place, according to the Laws of that Country; and upon Nil Debet pleaded you may give the Laws of that Country in Evidence.

(31) If the principal Cauſe be within the Juriſdiction, and an Iſſue depending on foreign Laws ariſes, it may be tried in the next County, and foreign Laws given in Evidence.

Domina Regina *versus* Sir Jacob Banks. Mich. 3 Ann. B. R.

(32) Trial by Proviso cannot be in the Case of the Crown; nor *Nisi prius*, unless by Warrant from the Attorney-General.

SIR Jacob Banks was indicted at the Quarter-Sessions in Berks, and the Indictment was removed hither by the Prosecutor, and now both the Prosecutor and Defendant made up the Record, took out Process, and carried down the Cause to Trial at the Assizes; and the Defendant put in his Record first, tried it, and was acquitted: The Prosecutor upon this moved for a new Trial, and had it.

Et per Cur'. 1st, Before the 5 & 6 W. & M. c. 11. and 8 & 9 W. 3. c. 33. H. indicted in any County might remove it into B. R. by Certiorari, and never was bound by Recognizance to try it, unless in London and Middlesex; That by this Means the Defendant was out of Court, & sine die, and new Process was to be awarded on which he might be outlawed, unless he came in gratis, which occasioned great Delay, and was the Cause of making those Acts.

Upon Removal of Indictment by the Prosecutor, if Defendant comes in by Process, he shall give Security to try.

2dly, That Removals by Defendants are provided for; but Removals by Prosecutors are not within those Acts, and that this Removal being before the Plea pleaded, the Defendant was out of Court & sine die, but may come in gratis, or be brought in by Process; and in the last Case on Pleading shall give Security to try it, which he is not obliged to do when he comes in gratis.

In what Cases the Defendant may carry down a Cause by Proviso.

3dly, That in Civil Actions the Defendant shall never carry down a Cause by Proviso, till there be a Laches in the Plaintiff; except in Causes where the Defendant is as a Plaintiff, as in Replevin, Prohibition, Quare Impedit, which are to have Return, Consultation, and Writ to the Bishop.

4thly, There can be no Trial by Proviso in a Cause of the Crown; because there can be no Default nor Laches, nor can the Crown be compelled to try any Cause by Nisi prius, and therefore every Cause of the Crown in this Court must be tried at Bar, unless the Attorney-General allows a Warrant of Nisi prius, which implies his Consent to try the Cause in the Country.

5thly, That as in Indictments of Treason or Felony, if the Attorney-General will delay, the Court may give the Defendant leave to bring on the Trial as they see fit; (and so it has been done) So in Indictments for Misdemeanors, as in this Case, The Defendant may in the first Instance by the Consent of the Prosecutor and Leave of the Attorney-General, carry down the Cause to Trial, but it shall not be allowed by Surprize on the Attorney-General, as here in this Case, and also without Consent of the Prosecutor, or any Default in him.

6thly, It was ordered to be a Rule hereafter, That when an Indictment is removed hither by the Proſecutor, the Defendant ſhall not carry it down to Trial without Leave of the Court on Motion.

Highmore *verſus* Walker. Mich. 4 Ann. B. R.

IN a Cauſe to be tried at the Sittings, the Defendant entred a Ne recipiatur; and the Queſtion was, Whether the Plaintiff could go on at the next Sittings without a new Notice? It was agreed, That if no Ne recipiatur had been entered, there muſt have been two Days Notice. The Clerks upon the principal Queſtion thought no Notice neceſſary; their Reaſon was, becauſe the Defendant himſelf had hindered the Plaintiff's Proceeding, and therefore ought at Peril to attend the next Sittings. But Holt C. J. contra, The Notice fell to the Ground with the Trial: A Rule was made, That where a Ne recipiatur was entered, the Plaintiff ſhall give Notice the ſame Sittings, and before they are over, that he will proceed to Trial the next Sittings: And it was ſaid, that if a Cauſe be not entered two Days before the Sittings, the Defendant may enter a Ne Recipiatur. (33) Two Day's Notice to be given after *Ne Recipiatur* at Sittings.

Dunkly *verſus* Wade. Paſ. 5 Ann. B. R.

IN Caſe for negligently keeping his Fire, a Verdict was found for the Plaintiff, and a new Trial granted. But per Cur'. Had a Verdict been for the Defendant, we would hardly have granted a new Trial, becauſe 'tis a hard Action. (34) Hard Action.

Ford *verſus* Tilly.

AN Inquiry found four voluntary Eſcapes, for which Ford, Warden of the Fleet, forfeited his Office: Iſſues hereupon were tried in B. R. at the Bar. One Eſcape was proved by a Witneſs, who was asked if he was never burnt in the Hand for ſtealing a Tankard; he anſwered, No. A new Trial was moved for upon producing the Record of the Conviction, and the Court denied the Motion, 1ſt, Becauſe it was a Trial at Bar. 2dly, It is no reaſon for a new Trial that you for the Defendant came not prepared; and the Chief Juſtice ſaid Soams's Caſe was a hard Caſe. Vide 3 Keb. 365, 369. 2 Lev. 114. Poſtea Paſ. 4 Ann. B. R. Between Cockroft and Smith, That the Party's Evidence was not ready, was held no Reaſon for a new Trial, tho' at Niſi prius: And a new Trial was denied. (35) New Trial not granted for Defect of Preparation.

Trover and Converſion.

Arnold *verſus* Jeffreyſon. Mich. 9 Will. III. C. B.

(1) Trover *de ſcripto ſuo obligatorio*, good.

TROVER de ſcripto ſuo obligatorio per quod tent. & obligat. fuit cuidam J. S. In Arreſt of Judgment after Verdict for the Plaintiff, it was held good, for it might be given to the Plaintiff, and ſo ſhall be intended, and then it was ſcriptum ſuum; and it is no Abſurdity, tho' it were made by him to another, for it is only a Deſcription of the Deed.

Hartford *verſus* Jones. Mich. 10 Will. III. B. R.

(2) Special Plea in Trover muſt confeſs a Converſion.

IN Trover and Converſion the Defendant pleaded, That the Goods were caſt away, and they ſaved and detained them till they were paid for their Pains: On Demurrer Holt C. J. held, That they might retain for Payment, as a Carrier for his Hire and Salvage is allowed by all Nations: He that ſerves another ought in reaſon to be paid for his Service; but the Plea is naught, for if the Detainer be lawful, he does not confeſs a Converſion: I never knew but one Special Plea good in Trover, viz. Yelv. 198. And the Rule was in the principal Caſe, to waive the Plea and plead Not guilty. Vide 2 Cro. 68, 69. 3 Cro. 262.

Hartford *verſus* Jones. Paſ. 12 Will. III. B. R.

(3) Trover for 20 Ounces of Cloves and Mace, well, without ſhewing how much of each, or that they were mix'd. Ill in Detinue.

TROVER for twenty Ounces of Cloves and Mace; after a Writ of Enquiry on a Judgment by Default, Holt C. J. doubted whether it was good, becauſe it was not ſaid, how much Cloves and how much Mace; or that it was ſo many Ounces commixt'; but he ſaid theſe were Incertainties, and that if this was compriſed in another Action, this Recovery would be a good Plea in Bar. In Detinue, this would be ill for Incertainty; for the Sheriff could not tell how much of one and how much of the other to deliver. The Court gave Judgment for the Plaintiff, without taking Notice of another Exception,

tion, viz. That it was alſo pro viginti parvis Inſtrument. carpentar', vocat. twenty ſmall Carpenter's Tools. 2 Saund. 74. 2 Ven. 76. Style 345. 1 Mod. 289. 2 Ven. 677.

Anonymus. Trin. 3 Ann. Coram Trevor *C. J.* *At* Niſi prius *at* Guildhall.

(4) Where Trover will lie againſt a Carrier.

TROVER lies not againſt a Carrier for Negligence, as for loſing a Box, but it does for an actual Wrong, as if he break it to take out Goods, or ſell it. Per Cur'. Paſ. 7 W. 3. B. R. and therefore Denial is no Evidence of a Converſion, if the Thing appears to have been really loſt by Negligence; but if that does not appear, or if the Carrier had it in Cuſtody when he denied to deliver it, it is good Evidence of a Converſion. Per Trevor C. J.

TYTHES.

Hick *verſus* Woodſon. Hill. 8 Will. III. B. R.

(1) County or Hundred cannot preſcribe in a *Non decimando* for Things tytheable of common Right; otherwiſe if not tytheable of common Right.

IN Attachment ſur Prohibition, the Plaintiff declared of a Cuſtom in ſuch a Hundred to pay no Tythe for Agiſtment of Cattle barren: Iſſue was taken upon the Cuſtom and found for the Plaintiff, but Judgment was arreſted with this Entry, Et quia apparet Curiæ Domini Regis hic quod conſuetudo præd. nullius Vigoris in lege exiſtit, ideo fiat Conſultatio, &c. Et per Cur'.

Tythe of Agiſtment of barren Cattle due of common Right.

1ſt, Tythe of Agiſtment is due of common Right, becauſe the Grals, &c. which is eaten, is de jure tytheable, and muſt have paid Tythe if cut at Perfection: And the Court took this Difference, viz.

That a Hundred or a County cannot preſcribe in a Non decimando, for a Thing that is in its Nature de jure tytheable; for, as no one ſingle Perſon, or his Eſtate, can; no more by the ſame Reaſon, can the Hundred, which conſiſts but of many ſingle Perſons Eſtates. Vide March. 26. 1 Ro. Ab. 653.

But

But of Things which in their Nature are not tytheable de jure, a Hundred or County may prescribe in a Non decimando, because they are discharged in such Case without a Custom to the contrary, and they do but insist on their ancient Right, and that Custom hath not prevailed against it: Ergo, the Case of Wood, 1 Ro. Ab. 654. Litt. Rep. 152, 153. And the Hearth-Penny, which is but a Modus for it, they allowed to be good Law; because Wood is not in its Nature tytheable, nor within the Reason of tytheable Things, which come not to Perfection every Year.

Hill *versus* Vaux. Mich. 10 Will. III. B. R.

(2) *Modus* to pay a whole Meal's Milk such a Day, and every 9th and 10th Night and Morning after, till a young Lamb yeaned be heard to bleat, in lieu of Tythe of Milk, ill.

Modus to pay part of the very Thing that is Tythe, not good, unless payable in another Manner.

ON a Suit in the Spiritual Court for Tythe of Milk, the Plaintiff moved for a Prohibition, suggesting a Custom in the Parish, that the 9th Day of May at Night, and the 10th Day of May in the Morning the Parson was to have the whole Meal's Milk, and so every 9th and 10th Night and Morning, till a young Lamb yeaned should be heard to bleat, in lieu of all Tythe of Milk. And the Case of thirty Eggs, in lieu of all Eggs, was cited 1 Ro. Ab. 648, 651. Et per Cur'. A Modus to pay one Thing for another, or a part of the same Thing in another Manner, may be good, but a Prescription to pay Part of the very Thing that is Tythe, can never be a good Modus, unless payable in some other Manner, so that the Parson has a Benefit by it. 3 Cro. 609. 2 Cro. 47. 1 And. 799. Mod. 229. Hob. 250. Ray. 237. 3 Bulst. 326. As to the Case of the thirty Eggs, he is bound to pay that, whether he has Hens or no, and he must pay it at a certain Time. But by this Modus the Parson may have nothing, as suppose a Lamb be heard to bleat before the 9th of May.

The Archbishop of York *versus The Duke of* Newcastle. Mich. 3 Ann. In Scacc.

(3) *Modus* of ten Fleeces of Wool and two Lambs, for all Tythes. Court divided whether good, or not.

HE Prescribed to pay ten Fleeces of Wool and two Lambs in lieu of all Tythes; and Price and Bury Barons, were of Opinion this was an ill Modus; because 'tis one Species of Tythe for another, and there is great Incertainty; for one Fleece may be twice as big, and three Times the Value of another. Vide 2 Lutw. 1052. 3 Cro. 786. 276. Mo. 909. 1 Ro. Ab. 649. Dy. 149. Hard. 174. Ward Chief Baron, and Smith Baron contra. 1st, A Modus is nothing but a real Composition, for or in lieu of Tythes, or an annual Profit certain and permanent; and they held that the Payment of any one Chattel for Tythe, was or might be a good Modus as well as Money; for why might not the

Parson originally agree to take ten Fleeces for his Tythe, as well as a Penny? They admitted that Payment of Tythe of one Species, or Payment of a Modus for one Species of Tythe could not be a Discharge as to another Species; but they held that this was not a Payment of Tythe, nor a Payment for a Species of Tythe; because it was to be paid at all Events, whether there be Sheep or no; and they denied the Case of 1 Ro. Ab. 651. and held it no more uncertain than to pay a Modus of ten Cheeses, which may differ vastly, both in Nature, Quantity, and Value; and it tends to the Disquiet of a Country to break in upon Customs and Usages, and it ought not to be done but on plain and manifest Reason.

Payment of Tythe of one Species not a good *Modus* for all.

Startupp *versus* Dodderidge. Pas. 4 Ann. B. R.

A Modus to pay 2 s. in the Pound of the improved Rent in lieu of all Tythes, was held naught; for that is to rise and fall as the Land is let, and the Parson cannot know it: And tho' a Custom to pay the double Value for a Fine may be good; yet that arises from a Man's Contract, which shall never be void where it may be reduced to any Certainty, and differs from this Case of a Modus, which ought to be as certain as the Duty, which is destroyed by it. Holt C. J. dubitante, upon a Motion for a Prohibition.

(4) *Modus* to pay 2 s. in the Pound of the improved Rent, ill. *Modus* should be as certain as the Duty destroyed by it.

VA-

VARIANCE.

Bragg *versus* Digby. Pas. 10 Will. III. B. R.

(1) Variance between Writ and Count not pleadable without craving *Oyer* of the Writ.

IN Case on several Promises by Original, the Defendant without craving Oyer of the Writ, pleaded Variance betwixt the Writ and the Count, shewing particularly wherein: And the Plaintiff demurred, and it was adjudg'd that the Defendant should answer over; for he ought to have demanded Oyer of the Writ before he could take Advantage of the Variance; because, tho' the Writ is in Court, yet being not upon the same Roll with the Count, the Defendant cannot plead to it without demanding Oyer.

Holman *versus* Borough. Trin. 1 Ann. B. R.

(2) Deed dated in the Year of our Lord set forth with the Year of the King also, no Variance.

IN Covenant, the Plaintiff declared of a Deed of Covenant, bearing Date the 30th of March Anno Domini 1701. Annoq; Regni Willi. tertii nunc Regis Angl', &c. Decimo tertio, and makes a Profert of the Deed, with a Cujus dat. est eisdem die & Anno; Upon Oyer craved, the Deed was dated only thus, viz. the 30th of March 1701, wanting Anno Domini, and likewise Anno Regni. And tho' it was demurred to for the Variance, the Court held it no Variance; for it was implicitly in the Deed. Vide 41 E. 3. 23.

Incledon *versus* Crips. Mich. 1 Ann. B. R.

(3) In Debt where the Quantity of the Duty depends upon the Deed, Variance is fatal, and cannot be help'd by *Remittitur*; otherwise where on Matter extrinsic.

IN Debt, the Plaintiff declared on a Deed, whereby the Defendant covenanted to pay the Plaintiff 35 l. per Hundred for every Hundred of Wood in such a Place, and that he delivered so many Hundreds and one Half, which came to 182 l. 10 s. The Defendant demurred. Et per Cur'.

There can be no Apportionment, and the Demand for the half Hundred, is demanding more than can be due by the Contract; and then the Question was, Whether a Remittitur could be entered for that, and Judgment given for the rest. Et per Holt C. J.

Where the Sum demanded depends on the Deed it ſelf, and on nothing extrinſical, as in Caſe of Debt or Covenant to pay 20 l. there can be no Remittitur, for the Variance which is made is inconſiſtent with the Deed upon which the Duty that is demanded entirely depends; otherwiſe where it may be more or leſs by Matter extrinſick; as in Debt for Rent, or in the Caſe at Bar; in that Caſe, if more be demanded than is due, it may be remitted; for the Variance is not inconſiſtent with the Deed; and as the Plaintiff is to recover on Trial what appears on Evidence to be due; ſo on Demurrer he is to have Judgment for no more than he ought to recover, and may remit the reſt. Vide Hob. 178. Dy. 65. Yelv. 66. 10 H. 6. 5. 1 Saund. 206, 286.

Chetley *verſus* Wood. Mich. 2 Ann. B. R.

(4) Recognizance in C. B. taken at a Judge's Chamber pleaded as taken in Court; Variance.

IN Debt upon a Recognizance, the Plaintiff declared as on a Recognizance acknowledged in the Court of Common Pleas, coram G. Treby, Mil. & ſociis ſuis; Nul tiel Record was pleaded, and the Record produced was a Recognizance taken before Mr. Juſtice Nevil, at his Chambers in Serjeants-Inn, and by him brought and delivered into Court; and it was adjudged that the Plaintiff had failed of his Record: For the Record is ſuch as it is entered upon the Roll, and in Pleading muſt be ſo deſcribed: Accordingly the Court of Queen's Bench do enter all Recognizances as taken in Court, but the Common Pleas enter ſpecially; ſo that their Recognizances bind from the Caption, ours from the Time of Entry; alſo upon theirs a Scire Facias lies in either County; But on a Recognizance in B. R. in the County of Middleſex only; therefore theſe differ in Subſtance; and as to the Uſage of declaring this Way, which was inſiſted on, the Chief Juſtice ſaid it was againſt Law.

Recognizance of Bail in C. B. binds from the Caption, in B R. from the Entry only.

Roberts *verſus* Harnage. Mich. 3 Ann. B. R.

(5) Bond to A. in 40 l. *ſolvend.* to his Attorney, declared on as payable to A. and no Variance.

IN Debt upon a Bond, the Plaintiff declared, quod cum the Defendant apud London', viz. in Paroch. beatæ Mariæ de Arcubus in Warda de Cheape per ſcriptum ſuum obligatorium conceſſiſſet ſe teneri to the Plaintiff in 40 l. ſolvend. to the Plaintiff, &c. the Defendant craved Oyer, and the Bond was to the Plaintiff to pay 40 l. to his Attorney or his Aſſigns, and was dated at Port St. Davids in the Eaſt Indies.

The Defendant pleaded theſe Variances in Abatement, and upon Demurrer the Court held,

1ſt, That the firſt was no Variance; for Payment to the Plaintiff or his Attorney is the ſame Thing: The Teneri made it a Debt

to the Plaintiff, and in Conſequence it may be payed to him; a Solvendum to any Body elſe would be repugnant. Vide 4 Ed. 4. 29. Sid. 295. 2 Keb. 81. But Payment to the Plaintiff's Attorney or his Aſſignee, is the ſame Thing.

2dly, The ſecond Variance was held fatal, tho' it was objected that the Place was only uſed as a Venue, for the Dating made the Bond local; and it is not a Bond dated at London, becauſe there is an expreſs Date at Port St. Davids; but the Plaintiff might have declared, that the Defendant apud Port St. Davids in the Eaſt Indies, viz. apud London. in Paroch', &c. for that was only uſing London, &c. for a Place of Trial. Broderick pro Quer. Parker pro Def'.

Darby *verſus* Anely. Trin. 4 Ann. B. R.

(6) Writ of Error of a Record *per billam*, the Record returned *per breve de Privilegio*, quaſh'd.

A Writ of Error was brought of a Judgment in C. B. reciting, quia in Recordo & proceſſu acetiam in redditione Judicii loquelæ quæ fuit in Curia noſtra per billam. The Record was Attachiatus fuit per breve de Privilegio è Curia hic emanen. ad reſpondend. the Plaintiff an Attorney of that Court juxta libertates, &c. de placito tranſgr. ſuper Caſum; and the Writ of Error was quaſhed for this Variance. Vide Lutw. 1634, 1637. 905.

Domina Regina *verſus Dr.* Drake. Mich. 5 Ann. B. R.

(7) Information for a Libel, Variance in the Word *nor* for *not* held fatal upon Evidence.

INFORMATION, for that the Defendant being evilly diſpoſed to the Government, did make a Libel, in which Libel were contained divers ſcandalous Matters ſecundum tenorem ſequent', and in ſetting forth a Sentence of the Libel, it was recited with the Word nor inſtead of not; but note, the Senſe was not altered thereby. The Defendant pleaded Not guilty, and this appearing upon Evidence, a Special Verdict was found. Et per Curiam.

Tenor imports a true Copy.

1ſt, Cujus quidem tenor imports a true Copy. Vide Reg. 169. 8 Co. 78. Co. Ent. 508. 2 Saund. 121. in hac quæ ſequitur forma, 5 Co. 53. Tenor is a Tranſcript, and implies the very ſame.

2dly, They held that this was not a Tenor, by reaſon of this Variance; for not and nor are different; different in Grammar and different in Senſe: And Powys J. held as to the Point where literal Omiſſions, &c. would be fatal, that where a Letter omitted or changed makes another Word, 'tis a fatal Variance; otherwiſe where the Word continues the ſame: And in the principal Caſe, no Man would ſwear this to be a true Copy.

3dly, The Court held that there was a Difference between Words ſpoken and Words written; of the former there could not be a Tenor; for there was no Original to compare them with, as there is of Words written; and tho' there has been Attempts to plead a quorum Tenor of Words ſpoken, it has never been allowed; and therefore where one declares for Words ſpoken, Variance in the Omiſſion or Addition of a Word, is not material; and it is ſufficient if ſo many of the Words be proved and found as are in themſelves actionable. Vide Dy. 75. 3 Cro. 503. Hard. 470. Otherwiſe in Debt upon a Bond; for upon Non eſt factum, any Variance is fatal.

In declaring for Words ſpoken, Variance in Omiſſion or Addition not material, if the Words proved are actionable; otherwiſe in a *Tenor* of Words written.

4thly, Holt C. J. held, That in Pleading there were two Ways of deſcribing a Libel or other Writing, by the Words or by the Senſe: By the Words, as if you declare of a Libel, cujus tenor ſequitur, &c. or quæ ſequitur in hæc Anglicana verba ſequentia, you deſcribe it by its particular Words, of which each is ſuch a Mark, that if you vary, you fail in making good their Deſcription. Vide Dy. 203. If a Man brings Treſpaſs quare clauſum fregit, and ſets forth Abuttals and Bounds, and fails in proving them, he is gone, and yet he needed not to have deſcribed it after that Manner. 2dly, You may deſcribe it by its Senſe and Meaning; thus it is a good Information to ſhew, That the Defendant made a Writing, and therein ſaid ſo and ſo, tranſlating it into Latin; in which Caſe, Exactneſs in Words is not ſo material, becauſe it is deſcribed by the Senſe and Subſtance of it.

In pleading, a Libel may be ſet forth *in hæc verba*, or by the Senſe and Subſtance of it.

VERDICTS.

Buxendin *verſus* Sharp. Paſ. 8 Will. III. C. B.

(1) THE Plaintiff declared that the Defendant kept a Bull that uſed to run at Men; but did not ſay, Sciens or Scienter, &c. This was held naught after a Verdict, for the Action lies not unleſs the Maſter knows of this Quality, and we cannot intend it was proved at the Trial, for the Plaintiff need not prove more than is in his Declaration.

Jenkins *verſus* Turner. Mich. 8 Will. III. C. B.

(2) Action for keeping a Boar *ad mordend. animalia conſuet.* held well after Verdict.

THE Plaintiff declared that the Defendant kept a Boar ad mordend. animalia conſuet', and knew of this Habit, and that the Boar did bite, &c. This was held good after Verdict, tho' it was objected that theſe Animals may be Frogs or Mice, &c. for we muſt intend there was Proof of biting ſuch Animals as will ſupport the Action, otherwiſe the Judge and Jury would not have concurred in this Verdict, whereby the Plaintiff recovers Damages: And as to another Objection, viz. That the Defendant cannot know what Animals he is to defend againſt; 'twas anſwered, That no Evidence can be given of killing any Animals but what he has Knowledge of.

Acton *verſus* Eels. Mich. 8 Will. III. B. R.

(3) Damages given in Treſpaſs laid at a Time not come, it ſhall be intended another Time was proved.

IN Treſpaſs for Aſſault and Battery, and Verdict for the Plaintiff, it was moved in Arreſt of Judgment, that the Time laid in the Declaration was not yet come. Et per Cur'. Then it is a Time impoſſible, and the Jury muſt be ſuppoſed to give Damages for another Treſpaſs, and it is as if no Time had been alledged; otherwiſe if the Time had been laid after the Action and before the Verdict, for that ſhall be intended to be the Treſpaſs that was given in Evidence, and that was after the Action brought; and ſo it is where it appears that the Jury give Damages for a Time not come, as in 2 Saund. 169. where the contrary cannot be

be intended, 3 Keb. 304. in Point. Judgment for the Plaintiff. Then Northy moved that they might have Leave to enter the Judgment as of the preceding Term, because the Plaintiff died since the Verdict. Curia, Enter it as you can, but at your Peril, we give no Leave nor Directions about it.

Roe *versus* Gatehouse. Mich. 8 Will. III. B. R.

(4) Incertainty in Count cured by Verdict.

ASSUMPSIT; quod cum the Defendant was indebted to him in 5 l. for Money lent, and promised to pay; Cumq; etiam, at the Request of the Defendant the Plaintiff found Horse-meat for J. S. super se Assumpsit; and says not that the Defendant super se Assumpsit. A Verdict being for the Plaintiff and entire Damages, and a Writ of Error brought in B R. relying upon 3 Cro. 913. and Noy 50. for J. S. might as well be the Person promising as the Defendant; and the Promise is the Gist of the Action, and an Incertainty in that cannot be cured by Intendment after Verdict. Sed per Cur'. It being said positively at first, That the Defendant super se Assumpsit, and then cumq; etiam, &c. the same Nominative shall go to all the Promises; and by reason of the word Etiam, it cannot be intended of a Promise by J. S. for he had not promised before. Judgment affirmed. Vide Sid. 292, 306. Lutw. 125. 3 Co. 703.

Prince *versus* Molt. Pas. 9 Will. III. B. R.

(5) Judgment arrested because more Damages recover'd than ought.

IN Case the Plaintiff declared, Quod cum quer' 2 Julii possessionat. fuisset de quodam clauso prati prædict. defend. 3 Augusti erexit novum molendinum & aquam currentem fecit inundare per quod inundavit clausum suum prædict. per quod totum usum & proficuum inde eodem secundo die Julii usque tempus exhibitionis billæ prædict. amisit: Verdict pro Quer. and intire Damages; but Judgment was arrested; for an Erection on the 3d Day of August, might make him lose a particular Gain or Profit from the 2d Day of July, as if he had laid in the Meadow for Hay. But by an Erection on the 3d Day of August he could never lose totum usum & proficuum from the 2d Day of July; therefore he has recovered more Damages than he ought, and this Case is not to be distinguished from Moor 887. Hob. 189.

East *versus* Essington. Mich. 1 Ann. B. R. Vide *this Case, Title* Bills of Exchange. Vol. 1. Pag. 130. pl. 14.

(6)

Crowther *versus* Oldfeild. Hill. 4 Ann. B. R. Vide *this Case, Title* Jeofails. Vol. 1. Pag. 364. pl. 5.

(7) WHERE a Verdict will aid a Title defectively set forth, but not defective in its self.

Hadley *versus* Stiles. Mich. 9 Ann. B. R.

(8) In Debt on single Bill and *Nil debet* pleaded, the Jury find *Nil debet* to part and *Debet* to the rest, well after Verdict.

DEBT on a Bill penal for 300l. The Defendant pleaded Nil debet, and the Plaintiff took Issue thereon, and the Jury found Nil debet for 200l. and Debet as to 100l. Mr. Lutwyche urged, That this Plea, Issue and Verdict were immaterial, and that the Debt could not be apportioned. Et per Cur'. The Plea was ill, but the Verdict has made it good: We will intend 200l. paid, and an Acquittance under Seal produced in Proof thereof, and the Jury may as well apportion here as in Debt on a simple Contract, where they may find Nil debet for part. Vide Mo. 957. 1 Rol. Rep. 257.

VIEW.

Kempſtet *verſus* Deacon. Paſ. 8 Will. III. C. B.

(1) A View is grantable, but that is only where the Title is in Queſtion.

Anonymus. Trin. 10 Will. III. B. R.

(2) Method of proceeding in Caſe of a View.

IT was ordered, That when in Order to a View, the laſt Juror is withdrawn, the Plaintiff ſhall take out a new Diſtringas, Amoto the laſt Man of the Panel, to diſtrain the other twenty-three, with an apponas etiam decem tales. At the Trial of this Cauſe for Want of a full Jury upon the principal Panel, ſome Taleſmen were ſworn and had the View, but the Diſtringas was returnable as an original Diſtringas, and ſo many of the principal Panel left out, who were not at the View, of which the Defendant complained, and would have ſet aſide the Trial for Irregularity; but becauſe no Venire appeared to the Court, and the Matter ſtood upon Record as an original Trial, and the Want of a Venire was helped by Verdict; and becauſe the Cauſe was tried by thoſe that were fitteſt, viz. thoſe who had the View, the Court would do nothing in it, but ordered the other Courſe for the Future.

Anonymus. Mich. 4 Ann. B. R.

(3) PER Holt C. J. Before we make a Rule for a View, the Venire facias muſt be returned, and then we may make a Rule, that ſo many of the Panel ſhall View the Premiſſes.

Villeins

Villeins and Villenage.

Smith *verſus* Browne *and* Cooper.

(1) *Indebitatus Aſſumpſit* for a Negro ſold. Q. Whether Inheritances, or not?

THE Plaintiff declared in an Indebitatus Aſſumpſit for 20l. for a Negro ſold by the Plaintiff to the Defendant, viz. in Parochia beatæ Mariæ de Arcubus in Warda de Cheape, and Verdict for the Plaintiff, and on Motion in Arreſt of Judgment Holt C. J. held, That as ſoon as a Negro comes into England, he becomes free: One may be a Villein in England, but not a Slave. Et per Powell J. In a Villein the Owner has a Property, but it is as an Inheritance; in a Villein he has a Property, but 'tis a Chattel real; the Law took no Notice of a Negro. Holt C. J. You ſhould have averred in the Declaration, that the Sale was in Virginia, and by the Laws of that Country, Negroes are ſaleable; for the Laws of England do not extend to Virginia, being a conquered Country, their Law is what the King pleaſes; and we cannot take Notice of it but as ſet forth, therefore he directed the Plaintiff ſhould amend, and the Declaration ſhould be made, That the Defendant was indebted to the Plaintiff for a Negro ſold here at London, but that the ſaid Negro at the Time of Sale was in Virginia, and that Negroes by the Laws and Statutes of Virginia, are ſaleable as Chattels. Then the Attorney-General coming in, ſaid, they were Inheritances, and transferable by Deed, and not without, and nothing was done.

Smith *verſus* Gould. Mich. 4 Ann. B. R.

(2) Trover lies not for a Negro; but in Treſpaſs *quare captivum ſuum cepit*, Plaintiff may give in Evidence that he was his Negro.

TROVER for ſeveral Things, and among the reſt de uno Æthiope vocat. a Negro, and on Not guilty pleaded Verdict was for the Plaintiff and ſeveral Damages, and as to the Negro 30l. And it was moved in Arreſt of Judgment, that Trover lay not for a Negro, for that the Owner had not an abſolute Property in him; he could not kill him as he could an Ox. Contra, It was ſaid a Property implies the Right of having and enjoying, and diſpoſing, but it does not always imply a Power to deſtroy; That this Power holds in Beaſts, Fowl and

Fish, which were made the Property of Mankind by the Act of God, and have a natural Existence, but not in Things incorporeal, which consist in jure tantum, for this being a Property ex Instituto only, the Owner has only a Power according to the Measure of this instituted Right. And it was instanced in the Case of a Common, a Way and a Ward. On a Ca. Sa. the Plaintiff has an Interest in the Body of the Prisoner as a Pledge, not to sell, but to keep, and it goes to Executors. Hob. 61. In a Servant to work him, in a Captive to sell him, Reg. 102. F. N. Br. 88. a. B. N. C. 295. Bro. Property 38. 1 H. 6. c. 5. in Rast. 219. Cott. Ab. 460. That the Writ de Nativo habendo must lay the Explees of a Villein in working and taring him at Will. Co. Ent. 406. That by the Law of Moses a Man may be a Slave, and a Slave was a Chattel, his Master's Money, Exod. 20. 21. That by the same Reason there may be a Servus prædialis, i. e. a Villein. One may be a Servus personalis, and that first a Captive and afterwards a Villein. Hob. 97. Brownl. 78. A Villein in Gross is a Chattel, for he is of a perishable Nature, and cannot endure for ever. So is Fitz Discontinuance 16. Br. Villein 60. As Villeins are regardant to Land, it is a different Thing, and in that respect they are Inheritances, and so are the Charters. Every Villein is intended in Law regardant; the Writ in the Register therefore supposes him to be nativum suum, but before he was a Villein, he was a Captive, and then a Chattel. Lastly, It was insisted, That the Court ought to take Notice that they were Merchandize, and cited 2 Cro. 262. The Case of Monkeys, 2 Lev. 201. 3 Keb. 785. 1 Inst. 112. If I imprison my Negro, a Habeas Corpus will not lie to deliver him, for by Magna Charta he must be Liber homo. 2 Inst. 45. Sed curia contra, Men may be the Owners, and therefore cannot be the Subject of Property. Villenage arose from Captivity, and a Man may have Trespass quare captivum suum cepit, but cannot have Trover de gallico suo. And the Court seemed to think that in Trespass quare captivum suum cepit, the Plaintiff might give in Evidence that the Party was his Negro, and he bought him.

Difference between Property in Things having a natural Existence, and a civil Existence only.

Servus prædialis and *personalis.*

VISNE.

Seaman *verſus* Ling. Mich. 6 Will. III. B. R.

(1) If the Defendant be a Barriſter or Attorney, he may change the *Venue* to *Middleſex*.

IF the Defendant be a Barriſter, he may have the Viſne changed to Middleſex. In Trin. 2 Ann. Wilcocks, an Attorney, was ſued by Bill of Privilege, and the Action was laid in Suffolk; and upon Motion the Venue was changed into Middleſex; and vide 2 Vent. 47. If an Attorney being Plaintiff lay his Action in Middleſex, the Venue ſhall not be changed; otherwiſe if in London.

Anonymus. Paſ. 8 Will. III. B. R.

(2) When Motion to change the *Venue* ought to be made.

PER Holt C. J. The Motion to change a Venue ought to be within eight Days after the Declaration delivered, but this Rule is not always ſtrictly adhered to. But Trin. 7 W. 3. B. R. It was ſaid by Aſton, one might move to change the Venue at any Time before Judgment ſigned, which Holt C. J. deny'd, ſaying, heretofore it was never granted after the Rules for Pleading were out.

The Duke of Norfolk *verſus* Alderton. Paſ. 9 Will. III. B. R.

(3) *Viſne* refus'd to be chang'd in an Action of *Scandalum Magnatum*.

A Motion was made to change a Viſne in an Action of Scandalum Magnatum upon the common Affidavit, inſiſting on my Lord Shaftbury's Caſe, 2 Jo. 192, 198. but it was denied; for in my Lord Shaftbury's Caſe, it was on an Affidavit of the vaſt Intereſt he had in the City, and the Unlikelineſs of an impartial Trial; but we will not deprive the Plaintiff of that Benefit the Law gives him, of laying his Action where he pleaſes, for the Convenience of the Defendant. Vide 1 Lev. 56.

Note, At Common Law, all Actions were laid in the proper County, that there might be a Jury de vicineto.

Anonymus. Mich. 10 Will. III. B. R.

IN an Action on the Case against the Drawer of a Bill of Exchange who lived at Bristol, and drew the Bill there, a Motion was made to change the Venue, but it was denied, for the Person upon whom the Bill was drawn, lived in London, and there was the Refusal, and that must be proved to make the first Drawer liable; for where Evidence necessary to support the Action arises in two Counties, the Plaintiff may chuse which he will; and this is the Ground of the Rule, That if the Plaintiff will be bound to give some material Evidence in the County where the Action is laid, the Court will never change the Venue. Et Pas. 10 W. 3. B. R. In Trover and Conversion the Defendant had leave to change the Venue, and the Plaintiff moved to set that aside, offering to be bound to give Evidence in the County where the Action was laid: Upon Enquiry the Court found the Plaintiff was Assignee of Commissioners of Bankrupts, and could prove the Assignment in that County: Per Holt C. J. the whole is transitory. Et per Cur'. The Conversion is the Cause of Action and not the Assignment, and you are in Place of the Commissioners, and the Venue was according to the Rule. And Pas. 12 W. 3. B. R. it was held, That where a Rule is made to change a Venue, and afterwards the Plaintiff would bring it back again, the Rule must be, dare aliquam evidentiam de materia in exitu, in the County where the Action was brought.

(4) Where Evidence necessary to support the Action arises in two Counties, the Plaintiff may lay it in either.

Dominus Rex *versus The Mayor of* Oxford. Pas. 13 Will. III. B. R.

IN Case for a false Return, the Action was laid in Suffolk, and the Defendant moved it might be laid in Middlesex; and gave as one Reason, That it would raise Heats in the County. The Court inclined to do it, but the Plaintiff insisted and would not consent, and therefore nothing was done, because he had a Right to lay it in either County. (5)

Crockett's *Case*. Trin. 3 Ann. B. R.

THE Plaintiff declared of a Promise in Staffordshire, and the Declaration was delivered in Easter-Term: Chetham moved to change the Venue. Et per Holt C. J. (The Motion being in Trinity-Term) unless it appears upon the Face of the Declaration, That the Plaintiff was not entitled to a Plea to (6)

enter, we expect an Affidavit when the Declaration was delivered, that thereby the Court may be ascertained.

Sir Samuel Gerrard's *Case*. Mich. 3 Ann. B. R.

(7) AN Action of false Imprisonment against the Sheriffs of London was laid in Middlesex, and upon the common Affidavit a Rule was made that the Venue should be changed to London; but then it was said that the Officer of the Counter was subject to the Sheriffs, and so there could be no good Trial, for which reason it was removed back to Middlesex.

Heathcoat's *Case*. Pas. 4 Ann. B. R.

(8) *Venue* not changed in Action against a Lighterman, *&c.* for Goods lost.

AN Action against a Lighterman for not delivering Goods, was laid in London, where they were to be carried. It was moved to change the Venue, because the Damage and Neglect was in Kent; sed non allocatur; for the Neglect is transitory, and not material where it was, and the Court will never change a Venue for a Carrier, which is the same Case; otherwise perhaps in Deceit, or where there is an actual Misfeasance. Sed per Holt C. J. Mich. 10 W. 3. B. R. fuit dit, That in an Action of Escape, it is not the Course to change the Venue.

Knight *versus* Farnaby *& al'*. Pas. 5 Ann. B. R.

(9) Clerk of Assize may lay his Action in *Middlesex*, and the *Venue* shall not be chang'd.

MR. Knight, Clerk of Assize of the Norfolk Circuit, brought an Action of Assault and Battery against Farnaby and others, for a Battery committed in Kent, and laid the Action in Middlesex: Upon the common Affidavit the Visne was changed, but upon the Motion of Mr. Knight, that Rule was set aside, and the Visne brought back again. Et per Holt C. J. In strictness of Law, an Action for a transitory Matter, as Battery is, may be laid any where. If by Law the Place were material, the Defendant might give in Evidence, as he does, in criminal Prosecutions, that the Battery was done in another County: However it is now allowed and become the Course of the Court to change the Venue for the Defendant upon the common Affidavit; a Practice which, as he had heard by old Practisers, came up first in King James the First's Time; but that Rule had never obtained in Cases of privileged Persons, as Barristers, &c. who are to attend at Westminster, and therefore have the Liberty of laying their Actions in Middlesex: So it was held in the Case of Mr. Thompson against Scroggs. The Plaintiff is an Officer,

Practice of changing the *Visne* in transitory Actions began in King *James* the First's Time.

rer, he is bound to attend the Assizes at Norfolk, and to attend at Westminster to return the Postea's. By the Statute of Westminster Justiciarii habeant Clericos suos irrotulantes; and in Dyer, upon a Question who should return the Postea's in Case both the Justices of Assize dies before the Day in Bank, 'twas held the Clerk of Assizes should return them. Therefore he is Clerk to the Judge of Assize and a Minister here above to attend upon Trials ordered by superior Courts upon Writs of Nisi prius issuing out of those Courts. Et per Powell J. The Privilege extends to Judge's Clerks, as well as to Serjeants at Law, Barristers, and Attorneys, for they are bound to be in Middlesex to attend their Masters, and so is the Clerk of Assize; that the Clerk of Assize was the Clerk of the Judge of Assize; and since the Statute has allowed the Judge of Assize to have a Clerk, they shall not be obliged to return the Postea's themselves, but the Clerk of Assize shall attend at Westminster to return them.

Clerks of Assize are by Stat. *Westm.*

Universities and Schools, &c.

Hinton *versus* Hern. Mich. 8 Will. III. B. R.

HINTON was libelled against in the University-Court of Oxford, reciting the Statute of E. 6. and Car. 2. And the Custom of the University to have but four Taverns, and that he sold Wine without their Licence in contempt of the Laws of the University and the said Statutes; and because a Penalty is inflicted by the said Statutes, and they cannot hold Plea for such Penalty, a Prohibition was granted.

(1) Vice Chancellor's Court cannot hold Plea for a Penalty of a Statute.

Matthews

Matthews *versus* Burdett. Hill. 1 Ann. B. R.

(2) Argued whether a Prohibition lay to the Ecclesiastical Court in a Suit for teaching School without Licence from the Ordinary, before the Act for preventing the Growth of Schism. *Quare.*

IN a Prohibition the Plaintiff declared, That whereas by the Common Law it was lawful to teach others, and instruct them in any honest Art or Science, and that teaching est res mere laica, &c. Yet that he was sued in the Spiritual Court for teaching Children in the Elements of Grammar, without Licence from the Ordinary: On Demurrer it was insisted for the Plaintiff.

1st, That the Law favours a means of Livelihood; that Grammar was equally useful to all literate Professions, and that a Lawyer or Physician could be no more without it than a Divine. That all the Colleges in the University were lay Corporations; that tho' the Members of the College might be all of them Spiritual Persons, yet the Corporation was Lay and Temporal; because the Institution and End was Temporal, viz. to advance Learning, which shews that a School-master is a Lay Employment, and was formerly under the Care of the Civil Magistrate: Stillingfleet's Orig. Britt. 210, 212, 213. That the Common Law takes no Notice of it but as Temporal. Vide 11 H. 4. 47. Poph. 170. Reg. 35. And that the only mention of it before the Reformation, is Anno Domini 1408. Per Linwood 282. That School-masters permit not their Scholars to ..... of Religion, under Penalty of being censured for Heresy, to which every Body was liable; which Provision was to prevent the spreading of Wickliffe's Doctrine: That no Law or Canon required a Licence till the Council of Lateran, Anno Domini 1215. Decret. 6. Tit. 5. cap. 1, 2, 3. and that is, That there shall be a Schoolmaster in every Cathedral, and that he shall be licenced by the Bishop. That the several Acts of Parliament which require the Schoolmaster's taking a Licence from the Bishop, shew it was not necessary before, nor was there any such Usage or Practice that can be made appear. Vide Stat. 23 Eliz. c. 2. 1 Jac. 1. c. 4. 14 Car. 2. c. 4.

2dly, That if this was a Calling which a Lay-Man might follow by the Common Law, a Canon cannot restrain him of the Liberty the Law gave him; the Common Law and Custom of the Realm cannot be altered or abrogated, but by Act of Parliament, and therefore a Canon cannot do it, tho' ordained by the King's Royal Licence, or afterwards confirmed by his Royal Authority. Vide 12 Co. 72. 2 Inst. 97. 647, 653, 657. 2 Ro. Ab. 454. Mo. 782. Ratio est, because being a Lay-Man, he is not represented, and therefore his Consent is not given, and a Man cannot be under the Obligation of a Canon without his Consent express or implied. In the Primitive Church the Laity were pre-

sent at all Synods. When the Empire became Christian, no Canon was ever attempted without the Consent of the Emperor; and his Concurrence included the Assent of the whole Body of the People; because he had the sole legislative Power in him: But this is not the Case of our King; for he has not the whole legislative Power in him: Ergo, his Consent to a Canon in re Ecclesiastica, makes it a Law to bind the Clergy, but not to bind the Laity. Vide 20 H. 6. 13. Er. Ordinary 1. 2 Ro. Ab. 226. 2 Cro. 670. 2 Brownl. 38. Cro. Car. 588. Palm. 379.

3dly, Where the Common Law or a Statute gives a Remedy in foro sæculari, whether the Matter be Temporal or Spiritual, the Conuzance of that Matter belongs to the King's Temporal Courts only, unless the Jurisdiction of the Spiritual Court be saved by that Statute which gives the Penalty; for otherwise one might be twice punished for the same Thing. Vide Litt. Sect. 136, 137. Cro. Car. 229. 1 Mod. 21, 22. 1 Jon. 320. Where a Crime which was punishable in the Ecclesiastical Court, is made Felony, their Jurisdiction is gone. For Note, The Nature of the Crime is alter'd. So 2 Leon. 53. 4 Leon. 92. That in this Case the Act of Parliament which gives a temporal Penalty, does not save the Jurisdiction of the Spiritual Court, which was urged as an Argument that the Parliament did not look upon it as an Ecclesiastical Matter; for in all Cases where Acts of Parliament have imposed farther Penalties in Ecclesiastical Offences, there is a Saving added for the Jurisdiction of the Ecclesiastical Court; so is 13 Eliz. cap. 5. Of Usury. 31 Eliz. c. 6. Of Simony. 4 Jac. 1. Of Drunkenness. 3 Car. 1. c. 1. Of the Observation of the Sabbath. 3 Jac. 1. c. 4. Of Recusancy. And they urged also that these Parliaments had not added these Savings, if they had been useless; but it was their Opinion, That imposing a Penalty made it a temporal Offence, and that their Jurisdiction would have been lost without such a Saving. And lastly this Difference was taken, That where an Act of Parliament gives a Remedy for a Special Matter in the Temporal Courts, the Spiritual Jurisdiction is gone; but where an Act gives a Remedy in a Temporal Matter to be prosecuted in the Spiritual Court, yet the Remedy at Common Law remains, as pro violenta injectione manuum in Clericum. Note, In the Statute de circumspecte Agatis, the Words are, commissum fuit alias, which must be understood of a Jurisdiction before granted to them.

On the other Side it was said, That the Canon of Lateran before mentioned, was received in England as well as the other Canon of the same Council for Parochial Tythes, and that appears by Custom, that the Bishop is to superintend the Education of Youth. Vide Lhw. l. 5. tit. De Magistris, and the several Statutes, requiring that he shall have a Licence from the Ordinary: And it was said, That the Toleration-Act did not influence

fluence this Case, for that did not exempt Men in Places of Trust from qualifying themselves according to the Rites of the Church of England.

Void and Voidable.

Hall *versus* Biggs. Trin. 2 W. & M. B. R.

(1) Where an Order of Justices is not void but voidable.

IN Debt on a Bond, with Condition to stand to and perform the Order of the Justices, the Defendant pleaded they made no Order, the Plaintiff replied and set forth the Order. The Defendant demurred, pretending it was a void Order, and that he was not bound to perform it, comparing it to the Case of an Award, but the Court did not think them alike; for the Order being a judicial Act is not absolutely void, but voidable, and continues an Order till avoided.

Prigg *versus* Adams *& al*. Mich. 4 W. & M. B. R.

(2) Judgment of a superior Court is only voidable.

IN Trespass and false Imprisonment, the Defendant justified as an Officer under a Ca. Sa. on a Judgment in the Court of Common Pleas upon a Verdict for 5 s. for a Cause of Action arising in Bristol. The Plaintiff replied, and set forth the private Act of Parliament for erecting the Court of Conscience in Bristol, wherein was a Clause, That if any Person bring such Action in any of the Courts at Westminster, and it appeared upon Trial to be under 40 s. that no Judgment shall be entered for the Plaintiff; and if it be entered, that it shall be void: Upon Demurrer the Question was, Whether the Judgment was so far void, that the Party should take Advantage of it in this collateral Action? And the Court held that it was not; but that it was only avoidable by Plea or Error; as where one is taken on Outlawry and hath no Addition; (Vide 7 H. 5. c. 5. 8 H. 6. c. 10. Bend. 14, 88, 122, 132. 1 Inst. 259. Dy. 214. 5 Co. 119.) and said it was not like the Case of a Judgment vacated. 2 Sid. 225.

Thompſon *verſus* Leach. Hill. 9 Will. III. B. R.

(3) Bond of an Infant, or *Non Compos*, is void.

BOND of an Infant or Non compos is void, becauſe the Law has appointed no Act to be done to avoid them; and the only Reaſon why the Party cannot plead Non eſt factum, is, becauſe the Cauſe of Nullity is extrinſick, and does not appear on the Face of the Deed.

Uſes and Truſts.

Davies *verſus* Speed. Hill. 3 W. & M. B. R. Rot. 261.

(1) Husband and Wife covenant to levy a Fine of the Wife's Land to the Uſe of the Heirs of the Body of the Husband on the Wife begotten, the Limitation is void.

HUSBAND ſeiſed in Right of his Wife: Husband and Wife covenant to levy a Fine to the Uſe of the Heirs of the Body of the Husband on the Wife begotten, Remainder to the Husband in Fee. They have Iſſue, the Wife dies, the Iſſue dies, and the Husband dies; and now the Queſtion in Ejectment was, Whether the Heir of the Husband, or the Heir of the Wife ſhould have the Lands? Et per Cur'.

1ſt, Here can be no Eſtate for Life to the Husband by Implication; becauſe the Eſtate was the Wife's, to which he is a Stranger.

2dly, This Limitation to the Heirs of the Body of the Husband, &c. was merely void; for taking it as a Remainder, there is no precedent Eſtate of Freehold to ſupport it; and taking it as a ſpringing Uſe, then it is a ſpringing executory Uſe, to ariſe after a dying without Iſſue, which the Law will not expect; ſo that 'tis either Way void, and yet muſt be one of them: But in this Caſe the Chief Juſtice held, That a Feoffment to the Uſe of A. and his Heirs, to commence four Years from thence, was good as a ſpringing Uſe, and that the whole Eſtate remained in the Feoffor in the mean Time; ſo it is if it were to commence

after the Death of A. without Iſſue, if he die without Iſſue within twenty Years.

Lord Angleſey *verſus Lord* Altham. Paſ. 8 Will. III. B. R.

(2) Fine levied and Common Recovery ſuffered, wherein Conuſee was Tenant, and no Uſes of the Fine declared. Intended to be to the Uſe of the Conuſee, in order to make a Tenant of the Freehold.

UPON the Trial of this Cauſe at Niſi prius in Middleſex, before Holt C. J. a Caſe was made for the Opinion of the Court, viz. H. levied a Fine, and afterwards ſuffered a Common Recovery, wherein the Conuſee was Tenant, and there being no Deed in the Caſe, it was objected, That the Uſe of the Fine reſulted to the Conuſor; and tho' the Intent of the Fine might be to make a Tenant to the Præcipe, yet no Uſe or Truſt can be averred ſince 29 Car. 2. c. 3. Sed non allocatur; for at Common Law the Uſe was always intended to be to the Feoffee or Conuſee, and in pleading, never was averred. Co. Ent. 114, 273. Plowd. 477. But if it be to the Uſe of the Feoffor or Conuſor, then it muſt be averred.

2dly, The Court held the Party was in by the Fine immediately, and ſo there was a good Tenant to the Præcipe.

3dly, The Statute extends not to Uſes by Operation of Law, but to ſuch Uſes as are to a third Perſon, and that neither the Conuſor nor the Conuſee could aver the Fine to the Uſe of a third Perſon ſince the Statute.

Tregame *verſus* Fletcher. Hill. 8 Will. III. B. R.

(3) Where the Uſes of a Recovery are declared by a Deed ſubſequent, the Pleading ſhould be general, that the Recovery was to ſuch Uſes.

ERROR of a Judgment in the Grand Seſſions of Wales, in Replevin, where the Defendant made Conuſance, That A. was ſeiſed in Fee-tail, and ſuffered a Common Recovery; and that by Deed made at a Time ſubſequent, 'twas agreed the Recovery ſhould be to the Uſe of B. for the Security of a Rent-Charge, and that Rent was Arrear, for which he diſtrain'd. Judgment was for the Avowant. Holt C. J. held, 1ſt, That it was not well to plead the Uſes were declared by a ſubſequent Deed; but he ſhould plead, Quod recuperatio habita fuit, &c. quæ quidem recuperatio in forma prædict. habita fuit, to ſuch and ſuch Uſes.

Where Uſes may be averr'd by Parol, and where not.

2dly, He held, That where the Uſes of a Recovery are declared by Deed precedent, no new or other Uſe can be averred by Parol, unleſs there was ſome Variance between the Deed and the Recovery; and that in Caſe of a Deed precedent, if the Party ſet up other Uſes, he muſt confeſs and avoid: But where they are by Deed ſubſequent, new or other Uſes may be averred without ſhewing the Deed, tho' there be no Variance, &c. becauſe there was an intermediate Time when there might be ſuch Agreement made, and the Uſes ariſe by the Recovery according

to that Agreement; and if a Deed ſubſequent be ſet up, the other may traverſe thoſe Uſes. Adjournatur.

Jones *verſus* Morley. Hill. 9 Will III. B. R.

(4) Where a Conveyance to uſes enures by Way of Tranſmutation of Poſſeſſion, the Uſes may be declared or revoked without Deed.

UPON a Special Verdict in Ejectment it was found, That Bowyer being ſeiſed in Fee, in Conſideration of Marriage, by Indenture of Leaſe and Releaſe conveyed to A. and B. to the Uſe of her ſelf in Fee, till the intended Marriage with Edward Morley ſhould take Effect, and until the ſaid Morley ſhould ſettle upon her a Jointure of 300 l. per Annum, and then to the ſaid Morley and his Heirs: The Marriage took Effect, and on the 29th Day of January, 1665, they covenanted and agreed to levy a Fine next Hillary-Term; and the Uſe thereof was declared by the ſame Deed to be to E. Morley and his Heirs. Afterwards, viz. the 31ſt Day of the ſame Month, by Indenture between the Huſband and Wife, it was agreed and declared, That the Uſes of the Deed of the 29th ſhould be revoked. After this, the ſame Hillary-Term, a Fine was levied; and this Writing of the 31ſt being no Deed, it was reſolved,

1ſt, That by the Agreement of the 29th, the Parties meant a Fine to be levied Hillary-Term come twelve Months, and not the Hillary-Term then current, and therefore this Fine was not purſuant to that Covenant.

2dly, That if the Fine had been levied purſuant to that Covenant, no parol Averment could have been allowed to declare other Uſes, or that the Fine was not to the Uſes of that Deed, and all Parties had been eſtopped to aver the contrary by Parol, but by Deed ſubſequent; and before the Fine other Uſes may be averred.

3dly, That ſince the Fine is not according to the Deed, other Uſes may be averred, tho' they were declared by Writing, and not by Deed; for by the Variance there is Room and Occaſion given to enquire and receive Information, that the old Agreement was relinquiſhed; and by the ſame Reaſon the Uſe of a Fine may be declared by Parol upon an original Agreement, it may now, as in this Caſe, where the original Agreement was relinquiſhed: Per without ſuch Averment the Fine ſhall be intended to the Uſe of the firſt Agreement, notwithſtanding the Variance.

4thly, That this is a good Revocation of the Uſes of the firſt Deed, tho' it be but a Writing; for where the Conveyance enures by Way of Tranſmutation, the Uſe is according to the Intent of the Party, and 'tis no Matter how that Intent is manifeſted, ſo as it may be known; but where the Conveyance is by Way of Covenant to ſtand ſeiſed, there muſt be a valuable Conſideration, or a binding Agreement by Deed.

Shortridge *verſus* Lamplugh. Mich. 1 Ann. B. R.

(5) If a Leaſe and Releaſe be pleaded to A. and his Heirs, and no Conſideration appears, nor ſaid to whoſe Uſe it was, it ſhall be intended to be to the Uſe of the Releaſee and his Heirs.

HE Brought Covenant as Aſſignee of a Reverſion, and ſhewed, That the Leſſor in Conſideration of 5 l. bargained and ſold to him for a Year, and afterwards releaſed to him and his Heirs, virtute quarundam Indentur' barganiæ venditionis & relaxationis necnon vigore Statuti de uſibus, &c. he was ſeiſed in Fee: And it was objected, That the Uſe muſt be intended to be to the Releſſor and his Heirs, becauſe no Conſideration of the Releaſe nor expreſs Uſe appeared by the Pleading; ſo that without conſidering the Operation of the Conveyance, the Queſtion was upon the Pleading, Whether the Uſe ſhall be intended to the Releſſor, unleſs it be averred to be to the Releaſee? Et per Holt C. J. To which the reſt agreed.

This Way of Pleading was certainly good before the Statute 27 H. 8. ſo is Plowd. 478, and many Precedents in Co. Ent. of Feoffments averr'd in the ſame Manner; for the Uſe was a Matter that was extrinſical to the Deed, and depended upon collateral Agreements at Common Law, and then the Uſe might, as ſince the Statute of Frauds by Writing, be averred by Parol, and therefore in pleading the Conveyance was taken to the Uſe of him to whom the Conveyance was made, till the contrary appeared; if it were otherwiſe, it ought to come on the other Side; and 27 H. 8. has not altered the Courſe of Pleading, which is rather confirmed by the Statute; becauſe, if now the Uſe be conſtrued to be to the Releſſor or Feoffor, the Conveyance will be to no manner of purpoſe, it being ſtill the old Eſtate to which the old Warranty and other Qualities remain annexed, whereas before the Statute there might be ſome End in making the Feoffment, viz. to put the Freehold out of him and prevent Wardſhip; and Co. Litt. goes no farther, than where there is a Feoffment to particular Uſes and Eſtates, the Reſidue of the Uſe ſhall be to the Feoffor, which is reaſonable; for the raiſing thoſe particular Eſtates appears a ſufficient Reaſon for the Conveyance. And Powell J. doubted, Whether there could be a reſulting Uſe on a Leaſe and Releaſe, unleſs where particular Uſes are limited; for this Way of Conveyance is grounded on the ancient Way of Releaſing at Common Law, wherein there was a Merger of Eſtate, which is a good Conſideration, as where the Leſſor confirms to the Leſſee and his Heirs. In Error of a Judgment of C. B. which was affirmed.

Q. Whether there can be a reſulting Uſe upon a Conveyance by Leaſe and Releaſe?

Broughton *verſus* Langley. Hill. 1 Ann. B. R.

(6) Deviſe to Truſtees and their Heirs on Truſt, to permit A. to take the Profits for his Life, and afterwards to ſtand ſeiſed to the Uſe of the Heirs of A.'s Body, is a Uſe in A. and he has a Tail.

Whatever was or would have been a Truſt at Common Law, is ſince the Statute a Uſe executed.

ONE ſeiſed of Lands in Fee, deviſed them to Truſtees and their Heirs, to the Uſes, Intents and Purpoſes herein after mentioned, viz. To the Intent and Purpoſe to permit A. to receive the Rents and Profits for his Life, and after that the Truſtees ſhould ſtand ſeiſed of the Premiſſes to the Uſe of the Heirs of the Body of A. with a Proviſo, that A. with the Conſent of his Truſtees, might make a Jointure for his Wife; and the Queſtion was, Whether A. had an Eſtate-tail executed, or not? and it was adjudged he had. Holt C. J. pronounced the Judgment of the Court, and gave theſe Reaſons: 1ſt, That this would have been a plain Truſt at Common Law, and what at Common Law was a Truſt of a Freehold or Inheritance is executed by the Statute, which mentions the word Truſt as well as Uſe; and the Caſe in 2 Vent. 312. Burchet and Durdant, is not Law; and that the Change of Expreſſion in the principal Caſe by uſing the Word permit in the firſt Clauſe, which are Words of Truſt; and afterwards making mention of a Uſe, is immaterial, in regard Truſts at Common Law and Uſes are equally executed by the Statute.

2dly, 'Twas held, That a Power to make a Jointure, does not neceſſarily exclude an Eſtate in Tail, or an Intent to give it; becauſe Tenant in Tail, without diſcontinuing or barring the Tail, cannot make a Jointure, and ſo this Power has its Uſe.

Adams *verſus Tertenants of* Savage. Hill. 1 Ann. B. R.

(7) Leaſe and Releaſe by A. to Truſtees and their Heirs to the Uſe of A. for 99 Years. Remainder to the Uſe of the Truſtees for 25 Years, Remainder to the Heirs male of A.'s Body; Remainder to the Heirs male is void, for want of a Freehold.

IN a Scire facias on a Judgment againſt Tertenants, it was found by Special Verdict, That one Savage being ſeiſed in Fee, conveyed by Leaſe and Releaſe to Truſtees and their Heirs, to the Uſe of himſelf for 99 Years. Remainder to the Uſe of the Truſtees for twenty five Years, Remainder to the Heirs male of his own Body, Remainder to his own right Heirs; the Queſtion was, Whether Savage was Tenant in Tail, or only Tenant for Years? And the Court held the Limitation to the Heirs male of the Body to be void, becauſe there was no preceding Eſtate of Freehold limited to ſupport it; and it ſhall not be implied contrary to the Intent of the Conveyance; and if it could be implied, it muſt be out of the Eſtate given to the Heirs of the Body, which cannot be, becauſe this is a new Uſe; whereas a reſulting Uſe is always from the old Eſtate, and parcel of the old Uſe; and here the Eſtate takes Effect by Tranſmutation of Poſſeſſion out of the Seiſin of the Truſtees; and not like Fen-

wick

wick and Milford's Case, where the Owner covenanted to stand seised to the Heirs of his Body: And yet per Powell J. Even in that Case, if there had been an express Estate limited to the Covenantor, it had been otherwise.

Pye *versus* George. Mich. 9 Ann. In Canc'.

(8) Trustees join to bar a contingent Remainders, it is a Breach of Trust.

TRUSTEES appointed to preserve contingent Remainders did join in a Conveyance to destroy the Remainder before a Son was born, and this was decreed a plain Breach of Trust, and that whoever claimed under this Conveyance, having Notice of the Trust, or by a voluntary Settlement, should be liable to make good the Estates. Per Harcourt, Lord Keeper.

Usury and Extortion.

Domina Regina *versus* Smith. Pas. 4 Ann. B. R.

(1) Justices of Peace have not Jurisdiction upon the Statute of Usury.

INDICTMENT was at the Sessions before the Justices of the Peace at Hicks's-Hall for Usury, contra formam Statuti, and Judgment was against the Defendant, upon which a Writ of Error was brought in B. R. and the Judgment reversed; for the Justices of the Peace have no Jurisdiction in this Case.

Domina Regina *versus* Baynes. Pas. 5 Ann. B. R.

(2) Charge of Extortion ought to be particular, and by the Defendant took it *extensive*.

UPON a Certiorari this Order was removed, Whereas by Complaint in Writing at this Sessions, exhibited to this Court against R. B. Clerk of the Peace, R. B. was charged with divers Misdemeanors in his Office, viz. That he exacted of one A. the Sum of 8 s. for a Subpœna, and did compel one B. to pay him 9 s. more than his due Fee: And it doth appear upon Evidence, That the said R. B. misdemeaned himself in his Office by

by extorting of the ſaid A. by Colour thereof 5 s. more than was due, and of the ſaid B. 9 s. more than was due; this Court doth diſcharge and remove him from the ſaid Office of Clerk of the Peace.

Note, By 1 W. & M. Seſſ. 1. cap. 21. ſect. 4. If any Clerk of the Peace do miſdemean himſelf in his Office, and thereupon a Complaint and Charge in Writing of ſuch Miſdemeanors be exhibited againſt him to the Seſſions, the Seſſions ſhall diſcharge him. It was agreed by all, That if here was not a Charge of Extortion againſt R. B. then he was not removed; for the Juſtices have only a Special Authority to execute as the Statute appoints, and the Act ſhall be conſtrued ſtrictly, becauſe it deprives the Defendant of the Benefit he has by Magna Charta, of being tried per Pares. The Juſtices of the Queen's Bench being divided, it was adjourned into the Exchequer-Chamber, where Gould and Powys Juſtices, Smith Baron, Ward C. B. and Trevor Chief Juſtice of the Common Pleas, held this a good Charge of Extortion, by reaſon of the Viz. which particularizes the general Charge, and incorporates what follows after it with what went before it. Cited 2 Brownl. 151. 1 Vent. 37. Weſt's Preſid. 97, 130. 1 Sid. 91. 1 Keb. 357. Holt C. J. Powell and five more Juſtices contra. Before the Viz. all was mere Recital and alſo general, and no general Charge is by Law allowable in any Caſe but Barretry, which in its Nature muſt conſiſt of a Heap and Multitude of Particulars; but that in this Caſe it ought to be certain and poſitive; becauſe he is charged with a Miſdemeanor, and ought to know what he is to anſwer to; he is not only to be fined, but to loſe his Freehold; and where a Man is to loſe any part of his Property, he muſt have a certain Charge againſt him; the Act requires the Cauſe of Removal ſhould be in Writing, that the Cauſe may appear, and that he may have the Benefit of Appeal; and theſe Articles are in the Nature of Informations; That what went before the Videlicet being only Matter of Recital, and a kind of Title to the Articles, the Charge begins at the Videlicet, and then it does not appear that theſe Miſdemeanors relate to his Office: It is not ſaid that he took thoſe Sums extorſive & colore officii, and a Man cannot be charged for Extortion without charging him with acting extorſive, which are Words as neceſſary as Proditorie & Felonice. In this Caſe non conſtat, but 8 s. was his Fee. The Charge ſhould have been, either that 3 s. was his Fee; and that he, colore officii ſui extorſive took 8 s. or generally, That he colore officii ſui injurioſe & extorſive took 8 s. pro feodo, &c.

Laſtly, They held, That what followed upon Evidence before the Juſtices, does not help; becauſe 'tis no part of the Charge: And the Order was quaſhed. Note, This Report is only of the Effect of what was ſaid in B. R.

In Convictions, what appears upon Evidence will not ſupply the Defects of the Charge.

Wager

Wager of Law.

Anonymus. Trin. 11 Will. III. B. R.

(1) Method of performing Wager of Law.

ACTION of Debt was brought on a By-Law; the Defendant waged his Law, and a Day was given upon the Roll for him to come and make his Law; and now upon the last Day of the Term he came: And Northy for the Plaintiff insisted, That if he swear falsly or rashly, and without Reason, the Court is not bound to receive him to it, and prayed a Day to speak to that Point. Sed per Holt C. J. We can admonish him; but if he will stand by his Law, we cannot hinder it, seeing it is a Method the Law allows; and the Defendant was set at the right Corner of the Bar, without the Bar, and the Secondary asked him, If he was ready to wage his Law? he answered, Yes; then he laid his Hand upon the Book, and then the Plaintiff was called; and a Question thereupon arose, Whether the Plaintiff was demandable: And a Diversity taken where he perfects his Law instanter, and where a Day is given in the same Term, and when in another Term: As to the last, they held he was demandable, whether the Day given was in the same Term or another: Then the Court admonished him and also his Compurgators, which they regarded not so much as to desist from it; accordingly the Defendant was sworn, That he owed not the Money modo & forma, as the Plaintiff had declared, nor any Penny thereof. Then his Compurgators standing behind him, were called over, and each held up his right Hand, and then laid their Hands upon the Book, and swore, that they believed what the Defendant swore was true. Per Northy, This will be a Reason for extending Indebitatus Assumpsit further than before. Holt C. J. We will carry them no farther.

Bro. Nonsuit 1.

Note, This seems to be the Case mention'd Pl. 2. to have happen'd in B. R. about two Years before, and not to be Law.

Mood

Mood *verſus The Mayor of* London. 2 Martii, 1701. *At* Guildhall-Chamber.

IN Debt for the Penalty of a By-Law the Defendant waged his Law, and it was over-ruled in the Court of the Lord Mayor, and a Commiſſion of Error ſued out before Holt C. J. Ward Chief Baron, and other Commiſſioners. Et per Holt C. J. Debt on a By-Law made by a Corporation, is founded on the Wrong of the Party in not ſubmitting to the Order of the Government of the Corporation, and it ariſes from his Contempt and Diſobedience, and in ſuch Caſes no Wager ought to be allowed: So it is in Debt for an Eſcape, for it ſuppoſes a Wrong, and the Action lies not againſt the Executors: So it is in Debt for Subſtraction of Tythes: So it is in Debt againſt an Executor on a Devaſtavit, becauſe it ſuppoſes a Wrong, and therefore the ſame Action lies not againſt the Executor of the Executor. (2) Wager of Law lies not in Debt on a By-Law, nor any Action where a Wrong is ſuppoſed.

By Common Law, if a Contract was ſecret and wanted Witneſſes, it was a Privilege on the Plaintiff's Side, as well as the Defendant's; for if the Contract was ſecret, the Plaintiff had the Privilege of putting the Defendant to his Oath. This appears from Magna Charta. Nullus ballivus ponet aliquem ad legem manifeſtam, nec ad ſacramentum ſimplici loquela ſua ſine teſtibus fidelibus. Before this, the Plaintiff on his Declaration upon bare Affirmance, might make the Defendant ſwear there was nothing due. At this Day, if the Plaintiff produce Witneſſes to prove his Demand, the Court may put the Defendant to wage his Law; and in ſuch Caſe the Defendant is not at Liberty to croſs-examine, no more than where the Plaintiff in a Prohibition produces Witneſſes to prove his Suggeſtion.

No Wager lies but where the Debt ariſes from a ſimple Contract that is ſecret, and not where the Action is founded on any Thing that is notorious. In Accompt, if the Receipt was by the Defendant, the Defendant may wage, not if by the Hands of a third Perſon: It is true, the Law is otherwiſe in Detinue on a Bailment; for tho' the Bailment was by the Hands of a third Perſon, the Defendant may wage his Law; but here the Bailment is not traverſable, but the Detainer, and that is the Point of the Action, and the Redelivery might be private. Wager lies in Accompt if he received of the Plaintiff, not of a Stranger. And in Detinue, whether his Receipt was of the Plaintiff or a Stranger.

In Debt on an Arbitrement (I intend where the Submiſſion is by Parol) the Defendant may wage his Law; becauſe, tho' the Arbitrators, who are Strangers, are concerned, yet the Submiſſion might be ſecret; and that is the Foundation from whence the Debt ariſes. In Debt *ſur Arbitrament.*

In Debt for an Amerciament in a Court-Baron, the Defendant may wage his Law; the Reaſon is, becauſe the Matter is of ſmall Value which concerns the Lord only; tranſacted in Pais, In Debt for an Amerciament in a Court-Baron.

But not on a Judgment in a Court-Baron.

which might be without his Knowledge: But in Debt on a Judgment in a Court-Baron, the Defendant cannot wage his Law; for the Judgment could not be but by Confession or Verdict, and it was in a proper Court; all which the Defendant cannot by his bare Oath falsify, and the Authorities to the contrary are not Law: And so it is in Debt on a Judgment in a Court of ancient Demesne. Br. Leygager 11, 34.

Lies not in Debt for Rent, and the Reason.

In Debt for Rent on a Lease-Parol, the Defendant cannot wage his Law, because his Occupation is notorious, which is a better Reason than because it savours of the Realty; and so it is in Accompt against a Bailiff for the same Reason, his Management and Transaction being notorious.

Nor in Debt by a Gaoler for Meat and Drink.

In Debt brought by a Gaoler against his Prisoner for Meat and Drink, the Defendant cannot wage, not because the Gaoler is obliged to find him Victuals, that is not true, as appears by Plowd. 68. a. but because the Defendant is in Durance, and the Plaintiff cannot take Security from him for Repayment; for a Bond will be void, so that he must be content with a Promise: And he did not deny the Case of 9 Co. 87. b. 88. a. which was Debt by a Labourer; it is but just that the Plaintiff should prove he was retained, rather than that the Defendant should be put to wage his Law.

In Debt on a By-Law made by a Company, the Defendant in a Case cited to be in B. R. about two Years before, waged his Law; but Holt C. J. said it was, because the Counsel for the Plaintiff did not challenge it; for he wondered at it then; but this is not so strong as Debt on a By-Law by a Corporation; for this obliges all Strangers without Notice; but the other only their own Members, till Notice: And the Chief Justice denied the Case in Co. Ent. 118. and the Case 2 Ro. Ab. 106. Pl. 9.

WAR.

WARRANTY.

Smith *verſus* Tyndall. Paſ. 4 Ann. B. R.

IN Ejectment, a Caſe was made for the Opinion of the Court: Maximilian Taylor being ſeiſed in Fee, made his Will in the Year 1674, and thereby gave ſeveral perſonal Legacies; and amongſt others, four Coats to four poor Boys of the Pariſh of J. S. for ever; and then he deviſed all his Lands, Tenements and Hereditaments whatſoever, and likewiſe all his Goods, Chattels, Money, and perſonal Eſtate, to Margaret his Wife, and her Aſſigns, and made her Executrix, and left 1000 l. perſonal Eſtate. Margaret married Archibald Tyndal, and they two by Indenture covenant to levy a Fine to the Uſe of them two for their Lives, Remainder to Archibald and his Heirs with Warranty, and accordingly a Fine was levied.

1ſt, The Court held this Deviſe to Margaret was a Fee, becauſe it was ſubject to a perpetual Charge.

2dly, That in Caſe it was not, yet that the Heir of Margaret was bound by this collateral Warranty.

3dly, That tho' a Ceſtuiq; Uſe is in the Poſt and not in the Per, yet he may take Advantage of a Warranty annexed to his Eſtate, according to Lincoln College Caſe; ratio eſt, becauſe by the Statute of Uſes, the Eſtate in Law in Poſſeſſion, is transferred to his Uſe, and he is Tenant of the legal Eſtate, and has all Advantages that the Tenant had before to defend his Eſtate; therefore he may rebut, for that is to defend; but he cannot vouch, for that is to recover in Value for the Loſs.

Ceſtuiq; Uſe may take Advantage of a Warranty annex'd to the Eſtate.

4thly, The Court held, That the Plaintiff in Ejectment may make Title by a collateral Warranty, and give it in Evidence as his Title, according to 10 Co. 97. So if a Diſſeiſor dies after five Years quiet Poſſeſſion, and the Diſſeiſee enter, the Heir may maintain an Ejectment, for the Right of Poſſeſſion belongs to the Heir, tho' the mere Right be in the Diſſeiſee: So if a Man enters by Wrong and diſſeiſes another, and continues twenty Years in quiet Poſſeſſion, yet in theſe Caſes, if a Writ of Right were brought, and the Iſſue joined upon the mere Right, the Verdict muſt be for the Plaintiff, notwithſtanding the Statute of Limitations in the one Caſe, or the collateral Warranty in the other.

Plaintiff in Ejectment may make Title by a collateral Warranty.

Rights of Entry are bound by collateral Warranty.

5thly, That Rights of Entry are bound by collateral Warranty as well as Rights of Action.

Warranty binds, not extinguiſhes a Right.

6thly, That no Warranty extinguiſhes a Right, but only binds or bars it as long as the Warranty continues in Force; for if the Warranty be releaſed, the ancient Right revives. Litt. §. 708.

Waifs, Eſtrays, &c.

Henley *verſus* Walſh. Mich. 4 Ann. B. R.

Owner of a Stray may ſeiſe it, tendering Satisfaction.

TRESPASS for his Horſe: Defendant pleaded, That one Pooly was Owner of the Horſe, and that the Horſe eſtrayed out of his Poſſeſſion and came to the Hands of the Plaintiff, and that he by Command of Pooly demanded the Horſe within a Year, &c. and tendered Amends, and that the Plaintiff refuſing to deliver him, he took him; to this there was a frivolous Replication, and upon that a Demurrer. Et per Cur'.

1ſt, Without telling any Marks or making any Proof of Property (which may be done upon the Trial) the Owner may ſeiſe his Horſe where he finds him. Vide Co. Ent. 40, 170. b. Raſt. 680. 7 H. 6. 2. 44 E. 3. 14. Br. Eſtray 1.

And 2dly, Tho' the Defendant does not plead directly that he tendered Amends, but only that he demanded the Horſe proferendo Satisfaction', yet the Court held this a direct Affirmation, like the Caſe of Warrantizando vendidit; where the Participle affirms as directly as a Verb; ſo dans plagam mortalem is well enough. Vide 2 Cro. 630. 4 Co. Long's Caſe.

And in Pleading it, he need not ſhew a certain Sum.

3dly, The Court held, That tho' it was ſaid he tendered Amends generally, and did not expreſs any certain Sum, yet that was good in this Caſe; and a Difference was taken between this Caſe and that of a Tender of Amends for a Treſpaſs. In that of a Treſpaſs if the Defendant pleads a Tender of Amends, he muſt ſhew what he tendered; for he muſt tender a certain Sum; and the Law puts this Difficulty upon him, becauſe he is the Wrong-doer, and the other is confeſſedly a Party injured: But

the Owner of the Stray is no Wrong-doer, and it is impoſſible he ſhould know how long his Horſe has been in the Lord's Cuſtody, nor how much will make a proper Satisfaction.

Another Exception was, That the Defendant does not aver the Amends tendered was refuſed. Et adjournatur. Vide Cro. El. 888, 889. 1 Ro. Ab. 879. 2 Ro. 92. 1 Sid. 13.

Weights and Measures.

Dominus Rex *verſus* Flint. Mich. 10 Will. III. B. R.

THE Defendant was indicted for not making his Bread of lawful Weight, and demurred to the Indictment; and Mr. Buxton took Exception, That it was only debitum pondus minime habens, not ſhewing how much debitum pondus was, and what was wanting; and this was agreed to be a fatal Exception by Holt C. J. And whereas it was ſaid the Demurrer had confeſſed a Deficiency, the Court held the Demurrer confeſſed nothing but what was well pleaded.

In Indictment for making light Bread, it is not enough to ſhew that it had not due Weight, without ſhewing what is due Weight.

Wills

Wills and Teſtaments.

Shires *verſus* Glaſcock. Paſ. 3 Jac. II. C. B.

The Atteſtation good within the Statute of Frauds if the Teſtator might ſee the Witneſſes ſign, if he pleas'd.

UPON a feigned Iſſue, the Queſtion was, Whether the Will was made according to the Statute of Frauds? For the Teſtator had deſired the Witneſſes to go into another Room, ſeven Yards diſtant, to atteſt it, in which there was a Window broken, thro' which the Teſtator might ſee them. Et per Cur'. The Statute required atteſting in his Preſence, to prevent obtruding another Will in Place of the true one: It is enough if the Teſtator might ſee, it is not neceſſary that he ſhould actually ſee them ſigning; for at that Rate if a Man ſhould but turn his Back or look off, it would viciate the Will. Here the Signing was in the View of the Teſtator; He might have ſeen it, and that is enough. So if the Teſtator being ſick ſhould be in Bed and the Curtain drawn.

WITNESSES.

[*Vide Title* Evidence.]

Dominus Rex *verſus* Crosby. Paſ. 7 Will. III. B.R.

ON a Trial at Bar for High Treaſon, the Priſoner, Mr. Crosby, took Exception to Aaron Smith's Evidence, having ſtood in the Pillory upon a Judgment in an Information againſt him for a Libel. Mr. Sollicitor and Mr. Cowper inſiſted, That the Infamy flowed from the Crime and not from the Puniſhment, and that Mr. Smith's Crime was not infamous, nor did it deſerve ſuch Puniſhment. Holt C. J. without determining this Point held, That Aaron Smith was reſtored by the general Pardon of 2 W. & M. which operated by Way of Reſtoration, and made him a new Creature. 3 Lev. 427. Vide the Caſe of Cheſter *verſus* Hawkins, That the Diſability flows from the infamous Judgment, and not from the Nature of the Crime; for if a Man be convict for a Cheat, and adjudged to ſtand in the Pillory, he cannot be a Witneſs; otherwiſe if he be not adjudged to ſtand in the Pillory: Alſo they held the Infamy was by the Judgment to ſtand in the Pillory, and not from the actually ſtanding there, and that he was diſabled to be a Witneſs, tho' he never ſtood. Nota, In theſe Caſes the Diſability is a Conſequence, and the Pardon which makes him de cætero a new Creature, diſcharges all Conſequences, Dependencies, &c. And therefore in the Caſe of the King and Weedon Ford, Mich. 12 W. 3. B. R. The Queſtion being where the King could Pardon the Diſability, and where not? Holt C. J. took this Difference; Where the Diſability is only the Conſequence of the Judgment, the King may pardon it; but where the Diſability is Part of the Judgment it ſelf, the King's Pardon will not take it away; therefore if a Man be convict of Perjury on the Statute, the King's Pardon will not reſtore; for it is not a Conſequence, but Part of the Judgment, viz. Quod impoſterum non ſit receptus ut teſtis. Vide Co. Ent. 368. But a Pardon by Act of Parliament will reſtore him in that Caſe. Quod nota. Quære of a Perjury at Common Law; and if the Law be

(1)

Whether the Infamy ariſes from the Crime or Judgment of the Pillory. Q.

The King may pardon Diſability where it is only Conſequence of the Judgment; otherwiſe where part of it; but in that Caſe a Statute pardon will.

be the ſame; for there the Diſability is only a Conſequence, and not Part of the Judgment; otherwiſe if a Jury be convict in an Attaint. Raſt. 86. a.

Pitman *verſus* Maddox. Hill. 11 Will. III. Coram Holt *C. J. At* Niſi prius *in* Middleſex.

(2) Shop book allow'd as Evidence on Proof of the Servant's Hand, who made the Entries, he being dead.

INDEBITATUS ASSUMPSIT on a Taylor's Bill; at the Trial coram & per Holt C. J. a Shop-book was allowed for Evidence, it being proved that the Servant that writ the Book was dead, and this was his Hand, and he accuſtomed to make the Entries; and no Proof was required of the Delivery of the Goods; and the Chief Juſtice ſaid, it was as good Evidence as the Proof of a Witneſs's Hand to an Obligation; and he held, That tho' the Stat. 7 Jac. 1. c. 12. ſays, A Shop-book ſhall not be Evidence after the Year, &c. That it is not of it ſelf Evidence within the Year.

Dominus Rex *verſus* Ford. Mich. 12 Will. III. B. R.

(3) Priſoner having eſcaped may be a Witneſs to prove the Eſcape voluntary, upon Traverſe of an Inquiſition for the Office againſt the Gaoler.

UPON a Special Commiſſion iſſued out of Chancery, an Inquiſition was taken, which found, That Weedon Ford had committed five voluntary Eſcapes; Ford traverſed, and upon the Trial, one who was ſuffered to eſcape, but was returned again, was produced to be a Witneſs: And it was objected, That this was to ſave his own Bond which he had given to be a true Priſoner, and would entitle him to an Action of falſe Impriſonment againſt the Marſhal, and compared it to the Caſe of an uſurious Bond. Sed per Cur'. The Bond given by the Priſoner is a collateral Matter to the Eſcape; and the Conſequence of his Evidence as to that Bond, is not material to diſable his being a Witneſs; and it is not like the Caſe of Uſury; for that renders the Bond void; and this is a Matter privately tranſacted between the Party and the Officer, of which there can be other Evidence.

2dly, That this Witneſs was convict of Barretry, and the Record produced; but the Judgment was, to be fined 500 Marks, and not to ſtand in the Pillory: On the other Side it was argued, That a bare Conviction of Perjury would take away one's Evidence, becauſe it is an infamous Crime; but not ſo of Barretry, which was not of an infamous Nature, without an infamous Puniſhment, as the Pillory. Curia contra, He is diſabled by the Conviction, for 'tis not the Nature of the Puniſhment, but the Nature of the Crime and Conviction that creates the Infamy.

The Nature of the Crime and Conviction, not of the Puniſhment, makes the Infamy.

Then 'twas inſiſted, That he was pardoned by the late general Pardon. Et per Holt C. J. If one be convict of Perjury upon the Statute, he cannot be reſtored to his Credit by the King's Pardon; for by the Statute, 'tis Part of the Judgment, that he be infamous and loſe the Credit of Teſtimony; but he may by a Statute pardon. But in other Caſes, where the Infamy is only the Conſequence of the Judgment, the King's Pardon may reſtore the Party to his Teſtimony. Held upon a Trial at Bar.

Anonymus. Paſ. 13 Will. III. B. R.

(4) Depoſition of a Witneſs examin'd before a Judge, becauſe going beyond Sea, cannot be read if he be in *England*.

IF a Witneſs going to Sea be by Rule of Court examin'd upon Interrogatories before a Judge, and the Trial come on before he is gone, his Depoſition ſhall not be read, but he muſt appear; for the Rule was made on Suppoſal of his Abſence.

Inter Oxenden *Bar.* *and* Penerice. In Canc'.

(5) Legatee may be a Witneſs againſt a Will.

A Queſtion was in Chancery, Whether a Legatee could be a Witneſs againſt a Will? Et per Cur', upon Debate, The Reaſon why a Legatee is not a Witneſs for the Will, is, becauſe he is preſumed to be partial in ſweating for his own Intereſt: But the Legatee, when he ſwears againſt the Will, ſwears againſt his Intereſt, and ſo is the ſtrongeſt Witneſs.

Words in General.

Smith *verſus* Wood. Mich. 5 W. & M. B. R.

(1) To call H. Whore-maſter, is ſuable in the Spiritual Court.

LIBEL in the Spiritual Court for theſe Words; You are a Rogue, Raſcal, Whore-maſter, and Son of a perjured Affidavit Bitch. Selby moved for a Prohibition, and all the Words being waived but the word Whore-maſter, he urged, That it was only a Word of Heat, and that Words of Paſſion were not defamatory, being regarded by the Hearers, no more than the Words of one Non Compos, or Mad; Ira furor brevis eſt.

Holt C. J. To ſay Whore-maſter of a Man is the ſame with Whore of a Woman, which is an Eccleſiaſtical Slander. Et per Selby, The Reputation of a Man is not ſo nice; but the Court would not diſtinguiſh them, and therefore denied the Prohibition. Holt C. J. ſaid, To call a Man Cuckold was not an Eccleſiaſtical Slander, but Wittal was; for it imports his Knowledge and Conſent to his Wife's Adultery. Vide 1 Sid. 248. Cro. Car. 339.

So of *Wittal.*

Impudent brazen-fac'd Belzebub, not ſuable.

Impudent brazen-faced Belzebub are not ſuable in the Spiritual Court, for they import Paſſion, but no Crime nor Credit, any more than Devil, or Prince of Darkneſs.

Coxeter *verſus* Parſons. Hill. 10 Will. III. B. R.

(2) Suit lies not in the Spiritual Court for Words, charging an Offence not puniſhable there.

DOctor Parſons libelled againſt Coxeter in the Spiritual Court, for ſaying of him, He had no Senſe, was a Dunce, and a Blockhead; and he wondered the Biſhop would lay his Hands upon ſuch a Fellow, and that he deſerved to have his Gown pulled over his Ears: And a Prohibition was granted; for a Parſon is not puniſhable in the Spiritual Court for being a Knave or a Blockhead, more than another Man; and whereas it was urged, That a Parſon might be deprived for Want of Learning; the Chief Juſtice ſaid, If that be the Caſe he muſt bring his Action at Law; for that was a temporal Damage: And a Prohibition was granted.

Acebery *verſus* Barton. Paſ. 4 Ann. B. R.

A Woman libelled in the Eccleſiaſtical Court againſt another for theſe Words, You are a Brandy-noſed Whore, You ſtink of Brandy: Mr. Earle moved for a Prohibition, inſiſting, they rather charged Intemperance than Incontinence. Vide 2 Ro. Ab. 296. Placito 15. 1 Jo. 44. 1 Cro. 110. 2 Keb. 334, 581, 577. 1 Sid. 433. 1 Mod. 23. 3 Lev. 119. But the Court denied a Prohibition. (3) Words of Incontinence.

Words actionable or not actionable.

Taſſan *verſus* Rogers. Mich. 1 W. & M. B. R.

CASE for Words of a Butcher, on a Colloquium of the Cow and the Fleſh, that the Cow died with calving, per quod he loſt ſuch and ſuch Cuſtomers: Verdict and Judgment pro Quer' in the Marſhalſea; but on a Writ of Error it was reverſed here; for the Words are not actionable; and the Special Damage does not help it; for it is not ſaid he could not ſell the reſt of his Cow, but that he loſt Cuſtomers. (1) Words of a Butcher, *that the Cow died of Calving, per quod* he loſt his Cuſtomers, not actionable.

Byron *verſus* Elmes. Mich. 8 Will. III. B. R.

IN Caſe for Words, the Plaintiff declared, That ſhe being a young Woman, the Defendant, to hinder her Marriage, ſaid, What did you go to *London* for, but to drop your Slink? She went to *London* laſt Winter to lie in, and to my Knowledge ſeveral People have lain with her; and they were held not actionable; for it is not having a Baſtard, but the Fornication is the Crime here, and that being puniſhable in the Spiritual Court, (2) Charge of Fornication not actionable without ſpecial Damage.

is not punishable here without a Temporal Loss: having a Bastard was never actionable before the Statute; nor is it since, unless the Parties come within the Penalty of the Statute, which is only when the Parish is chargeable.

Anonymus. Mich. 8 Will. III. B. R.

(3) *She had a Bastard*, not actionable because it don't appear that it was chargeable to the Parish.

CASE for these Words, She had a Bastard Child, and Verdict for the Plaintiff; and the Court thought them not actionable, according to Salter and Brown's Cases. Cro. . . and denied Anne Davies's Case, 4 Co. 16. b. for she is not punishable at Common Law in the King's Temporal Courts for having a Bastard; nor is she punishable by 18 Eliz. unless her Bastard be likely to become chargeable to the Parish; the Statute only extends to such Bastards. In other Cases she is only punishable in the Spiritual Court for whoring, and may sue there, but cannot sue here too; for the Party would be doubly punished by that means. Sed adjournatur.

Savage *versus* Robery. Pas. 10 Will. III. B. R.

(4) *You are a Cheat*, spoke of a Trader, not actionable without laying a *Colloquium* of his Trade.

THE Plaintiff declared that he was a Trader, and the Defendant said of him, You are a Cheat, and have been a Cheat for divers Years: Upon the first Motion, which was Mich. 9 W. 3. B. R. Holt C. J. held, the Words must be understood of his Way of Living, and that it needed no Colloquium. But Pasch. 10 W. 3. B. R. Mutata opinione, Judgment was arrested. Vide 1 Vent. 117, 268. 2 Saund. 307. Jones 156. Ray 62, 169.

How *versus* Prinn. Mich. 1 Ann. B. R.

(5) *Don't vote for him, for he is a* Jacobite, *and for bringing in the Prince of* Wales *and Popery, to destroy our Nation*, spoken of a Justice of Peace and Deputy-Lieutenant, held actionable.

THE Plaintiff declared, That being a Justice of Peace and Deputy-Lieutenant, and having served as Knight of the Shire for the County of Glocester, and intending to stand Candidate again to be Knight of the Shire for the same County, the Defendant in Discourse with J. S. speaking of the Plaintiff and his standing Candidate, said; Do not vote for him, for he is a *Jacobite*, and for bringing in the Prince of *Wales* and Popery to destroy our Nation: Verdict for the Plaintiff and intire Damages.

In Arrest of Judgment 'twas objected,

1st, That it was uncertain where the Prince of Wales should be brought in.

2dly, That there was no such Person, and the Court could not take Notice of him.

3dly, He might mean it legally by Act of Parliament.

4thly, He is not charged with any Act.

5thly, The Offices recited were not Offices of Profit. Sed per Cur'.

1st, The Words being spoken with respect to an Englishman, therefore the bringing in must be supposed to be into England; the rather, because 'tis said to be, to destroy our Nation; and the Defendant could not have been found guilty, if he had appeared upon Trial to be a Dutchman, as in Cromwell's Case, Thou art a Murderer; upon Evidence, it appeared to be spoke in the Sense, a Murderer of Horses, and the Defendant was acquitted.

2dly, We will take Notice of the Prince of Wales, not as really such, but as pretendedly such, being mentioned in Acts of Parliament; and one may gain a Name by Reputation, as a Bastard does that of his reputed Father.

3dly, We cannot suppose he can mean to do this fairly; but if he does, 'tis Scandal; for the Queen and Government being Protestant, is good Reason for them to displace him, as not fit to be trusted.

4thly, As to his not being charg'd with any Act, Inclination and Principles are sufficient without an Act. 3 Lev. 90. 1 Brownlow 5. March 4. 1 Ro. 86. Ellis's Case, and so was Sir Tho. Clargis's Case.

5thly, In Offices of Profit, Words that impute either Defect of Understanding, of Ability or Integrity, are actionable; but in those of Credit, Words that impute Want only of Ability, are not actionable, as of a Justice of Peace: He a Justice of Peace? He is an Ass, and a Beetle-headed Justice: Ratio est, because a Man cannot help his Want of Ability, as he may his Want of Honesty; otherwise where Words impute Dishonesty or Corruption; as in this Case, where the Office is an Office of Credit, and the Party charged with Inclinations and Principles which shew him unfit, and that he ought to be removed, which is a Disgrace.

In Offices of Profit, Words imputing Want of Ability, are actionable; otherwise in Offices of Honour.

Baker *versus* Peirce. Mich. 2 Ann. B. R.

YOU stole my Box-Wood, and I will prove it, were held actionable, for they tend to disgrace the Plaintiff with an Imputation of Felony, and may be so understood: These sort of Actions stand upon their own Bottom, and are under no set Rule, but ought to be incouraged to prevent breaking the Peace: Thou art

(6) *You stole my Box-wood, and I will prove it,* actionable.

art a Thief and haſt ſtoln my Wood, are actionable. There is no Difference between and and for: To ſay a Man has the Pox, is not actionable; but to ſay farther, and got it of a yellow-haired Wench in *Moorfields*, are actionable; not that the Intendment is neceſſary that he meant the French-Pox, but the Senſe leaned that Way.

Graves *verſus* Blanchet. Paſ. 3 Ann. B. R.

(7) ACTION for theſe Words, She is a Whore, and had a Baſtard by her Father's Apprentice; Judgment was arreſted: The Court ſaid they could not overthrow ſo many Authorities; the Reaſon of the Law is, that Fornication is a ſpiritual Offence; and no Action lay at Common Law for what the Common Law took no Notice of, without ſpecial Damage.

Walmſley *verſus* Ruſſel. Trin. 3 Ann. B. R.

(8) *There goes your rare Chancellor to ſuborn Witneſſes to ſwear againſt the Parſon,* not actionable.

IN Caſe for Words, the Plaintiff in his Declaration ſhewed, That he was Chancellor to the Biſhop, and ſtood for Parliament-Man, and the Defendant to defame him ſaid, There goes your rare Chancellor to ſuborn Witneſſes to ſwear againſt the Parſon. Powys and Gould Juſtices held them actionable, becauſe they touched him in his Office, and ſuborning is to be taken in malam partem, and the Words were the falſer if there was no Perjury or Swearing. Vide 3 Cro. 93. 1 Lev. 180, 118. 1 Cro. 14, 15, 190. Hard. 103, 501. Mo. 243. 1 Vent. 20. 1 Ro. 79. Holt C. J. and Powell J. contra, To ſay, a Man is forſworn is not actionable; a fortiori, to ſay one ſuborned another to forſwear: Suborning is not a Crime of ſelf, but as it relates to Perjury, and there cannot be a Subornation of Perjury or Swearing, but where there is Perjury and Swearing. Here is nothing ſaid that relates to his Office, or touches it; there goes your rare Chancellor, is only a Deſcription of the Perſon.

Turner *verſus* Ogden. Hill. 3 Ann. B. R.

(9) Words ſubjecting H. to puniſhment may not be actionable, unleſs ſcandalous.

THOU art one of thoſe that ſtole my Lord *Shaftsbury*'s Deer, held not actionable; for tho' Impriſonment be the Puniſhment in thoſe Caſes, yet per Holt C. J. It is not a ſcandalous Puniſhment. A Man may be fined and impriſoned in Treſpaſs; for there muſt not only be Impriſonment, but an infamous Puniſhment; 'tis true, calling Papiſt has been held actionable, but that was only in reſpect of the Times.

Speed

Speed *verſus* Perry. Trin. 4 Ann. B. R.

CASE for theſe Words, You are a Raſcal and a Villain, you have forgot ſince you lived in the *Black-bull* Yard, there you could procure broad Money for Gold, and clip it when you had ſo done, and then the Shears could go. Serjeant Darnell moved in Arreſt of Judgment, becauſe the Words imputed no Act, but a Power only. Sed per Cur'. Where the Matter imputed is confined to a particular Place, As you could in ſuch a Place, they muſt be underſtood to imply an Act; for a Power is the ſame in all Places. And Powell cited the Caſe of Horne and Powell. Trin. 12 W. 3. C. B. You may well ſpend Money at Law, for you can coin Money out of Half-pence and Farthings, which was held to import an Act done, becauſe by a bare Power he could never be able to ſpend Money at Law; and the Court denied 1 Ro. 72. Placito 9.

(10) *In* Black-bull *Yard you could procure broad Money for Gold, and clip it*; held to import an Act, and actionable.

Words indictable and not indictable.

Domina Regina *verſus* Langley. Hill. 2 Ann. B. R.

INDICTMENT for ſaying to the Mayor of Salisbury, You Mr. Mayor, I care not a Fart for you; and at another Day, You are a Rogue and a Raſcal: On Demurrer, Mr. Ward argued, they were not ſpoken while he was in the Execution of his Office, and that this is no Offence indictable. Vide 1 Ro. Rep. 79. 11 Co. 95. 3 Cro. 78, 689. Mo. 247. 1 Vent. 16. Vide cont. 1 Cro. 503, 504. 2 Bulſt. 139, 140. 3 Mod. 139. Holt C. J. Theſe Words are not indictable, for the Mayor was not in Execution of his Office nor a Patent Officer. It might be more doubtful if the Words were of a Patent-Officer; for then it is an Aſperſion to the Queen and Government

(1) Words of ſlander ſpoken of a Mayor, not indictable; otherwiſe if written.

ment that imploys him: Here it does not appear the Mayor was a Justice of Peace; at least not by Commission from the Queen; yet if these Words had been written, an Indictment would have lain. Vide 1 Sid. 270. 1 Lev. 139. Et per totam Curiam, Words that directly tend to the Breach of the Peace, as if one Man challenge another, are indictable; and the Commission of Oyer and Terminer de propalationibus verborum, is to be construed of Words against the Government, or Scandalum Magnatum, &c. But for these Petit Offences, which are contra bonos mores, the Law has another Provision, by requiring Surety for the Peace and Good Behaviour; in Default whereof the Magistrate may commit him, when spoken out of Court; and when in Court, then the Magistrate may proceed summarily against him, and fine him for the Contempt. Quashed.

Clause *de verborum propalationibus* in the Commission of *Oyer* and *Terminer*, what it refers to.

Domina Regina *versus* Wrightson. Pas. 7 Ann. B. R.

(2) Words of a Justice of Peace: *He is a Fool, an Ass, and a Coxcomb, and knows no more than a Slickhill*, not indictable, but Cause to bind to the Good Behaviour.

INDICTMENT for saying of Sir Rowland Gwyn, who was a Justice of Peace, in Discourse concerning a Warrant made by him, Sir *Rowland Gwyn* is a Fool, an Ass, and a Coxcomb, for making such a Warrant, and he knows no more than a Slickhill, held naught on Demurrer: The Court held, That here was a Breach of Good Manners, and he might be bound to the Good Behaviour; but here was no indictable Offence: The Counsel urged, That tho' Words spoken of a Magistrate in the Execution of his Office, might be indictable as a Matter that disturbs the publick Peace; yet not when it refers to some particular Act. Vide 2 Keb. 494. Hutt. 131. 1 Cro. 362. 3 Mod. 139. 1 Vent. 169. And Domina Regina *versus* Soley. Mich. 4 Ann. B.R. Who was indicted for these Words, He is not fit to be a Justice; for if a Man is before him, he will give it right or wrong where his Affection is, and ruled the Indictment lay not. Et per Holt C. J. To say, a Justice is a Fool or an Ass, or a Coxcomb, or a Blockhead, or a Bufflehead, is not indictable; quod fuit conces. per Powell. Vide 2 Ro. Rep. 78. 4 Inst. 181.

WRIT.

Touchin's *Case*. Mich. 10 Will. III. B. R. Vide *Title* Amendment.

IN all continued Writs the Alias must be tested the Day the former was returnable. (1)

Dominus Rex *versus The Mayor of* Hertford. Mich. 11 Will. III. B. R.

INFORMATION in Nature of a Quo Warranto; a Venire issued returnable in Easter-Term, and a Distringas in Trinity, and an Alias Distringas fifteen Days from the Teste the same Trinity-Term: It was objected, That this was irregular, for that all Process on the Crown-Side is returnable de termino in terminum, and not in fifteen Days, and the Precedents are so: It was answered, That Process of Outlawry was the only Process returnable de termino in terminum. Vide 2 Inst. 550. 1 Inst. 134. 9 Co. 119. b. [Note, These Authorities are general and make no Distinction]. Holt C. J. said, there was no Question but the Process might be sued out returnable in fifteen Days; And Sir Samuel Astry reported the Practice according to this Diversity. (2) Process out of the Crown-Office may be returnable in fifteen Days, except of Outlawry, which must be *de termino in terminum*.

Dominus Rex *versus The Mayor*, &c. *of* Abingdon. Pas. 12 Will. III. B. R.

A Mandamus was directed Jacobo Courteen Majori Ballivis & omnibus principalibus Burgensibus Burgi de Abingdon, who by the Constitution were to chuse the Mayor out of such Persons as should be propos'd by the Commonalty, commanding them to chuse accordingly: It was objected to the Writ, That it was misdirected; for that this was but a Part of the Corporation, viz. Chief Burgesses; whereas the Name of the Corporation was, Mayor, Bailiffs and Burgesses; and it was urged, that Persons constituting a Corporation could be considered, but (3) Writ of *Mandamus* ought to be directed to the Persons who are to do the Act.

in one of these two Capacities, viz. their Corporate or their Natural, and that the Writ must be directed to them, either by their Names, or as a Corporation; and they cited Holt's Case, 2 Jones 52 in Point. Holt C. J. said, that Case was not Law, That Serjeant Pemberton, Sir William Jones, and all the learned Part of the Bar wondered at the Resolution: And tho' it should be true, that a mandatory Writ might be directed to the whole Corporation, yet it could not be necessary it should be directed to more than those, or that part of the Corporation that was concerned in the Execution of the Thing required, for it is not in the Power of others to put the Command of the Writ in Execution; and the Writ was held good.

Shirley *versus* Wright. Trin. 1 Ann. B. R.

(4) Writ of Execution returnable two Terms from the *Teste*, is well; *mesne* Process void.

IN Debt for an Escape of one taken upon a Ca. Sa. which appeared to be returnable the Term next but one after the Teste, so that a Term intervened, after a Verdict for the Plaintiff, 'twas moved in Arrest of Judgment, that the Writ was merely void, and consequently there could be no Escape, and the Sheriff did well to let him go; and 3 Cro. 468. was cited as a Case in Point. On the other Side, to shew that a Writ may be faulty, and yet not void, were cited Poph. 271. Dy. 67, 175. 21 H. 7. 16. Sty. 339. 1 Ro. 242. 3 Cro. 188. Mo. 274. 1 Cro. 271. 2 Bulst. 256. 2 Ro. Rep. 432. Per Holt C. J. Escape lies against the Sheriff; and there is a Difference between a Capias in mean Process, and a Capias in Execution. In mean Process, if a Term be omitted the Writ is void in all Actions personal, and the Sheriff shall not be charged; for the Cause is discontinued and out of Court by the Intermission; and by not having a Day in Court by the Return of the Writ as he ought, the Party may be at great Prejudice by reason of the Imprisonment in the mean Time.

But in Executions a Ca. Sa. omitting a Term, is not void, for the Party is not to have a Day in Court; his Cause is at an End, and he must be in Prison, whether the Writ be returned, or not; nor is it necessary it should be returned. Per Curiam. The Plaintiff had Judgment, Nisi, &c.

Writ bearing *Teste* out of Term is void, but the Sheriff is justifiable.

And in the same Case Holt C. J. said, If a Writ of Execution bear Teste out of Term, the Sheriff is justifiable, and yet shall not be liable to an Action of Escape, for 'tis a void Writ.

Helliot

Helliot *verſus* Selby. Trin. 2 Ann. B. R.

IN Replevin the Declaration was, That the Defendants ſummoniti fuerunt ad reſpondend. de placito Captionis & injuſtæ detentionis averiarum ipſius, &c. The Defendant avowed, and the Plaintiff pleaded in Bar, and the Defendant made a naughty Reſolnder, upon which it was demurred; and now Weld took Exception to the Original, that it was Nonſenſe, and that there was no ſuch Word as Averiarum. Holt C. J. If the Original had been averiarum, it had been naught; but this is only a Recital of an Original, and the Court will not judge upon a Recital; but the Way to take Advantage, is, to crave Oyer; for this Recital is only a ſhort Intimation to the Court of what the kind of the Plea is. Powell J. A Replevin may be by Plaint in the Country, as well as by Original here, becauſe it is ſummonitus. And if this Caſe had been here by Error out of the Common Pleas, in which Caſe the Plaintiff could not have taken Advantage of this Fault by Oyer, then he muſt have alledged Diminution and pray'd a Certiorari; and if the Original returned had been ſo, the Court would have reverſed the Judgment.

(5) Defendant cannot take Advantage of an ill Original by the Recital, but upon *Oyer* or a *Certiorari*.

Domina Regina *verſus The Mayor*, &c. *of* Hereford. Trin. 4 Ann. B. R.

A Mandamus to admit one to the Office of Town-Clerk was directed to the Mayor and Aldermen of Hereford; and Mr. Eyres urged the Writ ought to be directed to the Body-Politick, in whom the Inheritance of the Franchiſe was, by the Name of Incorporation; and that was, Mayor, Aldermen and Citizens; and indeed the Writ was returned by the Mayor, Aldermen and Citizens in this Caſe, and cited 3 Bulſt. 190. Holt C. J. denied that Caſe, and ſaid, it is enough to direct the Writ to thoſe that are to execute the Writ, or do the Thing required; then it appeared the Mayor only was to admit, whereas the Writ was directed to the Mayor and Aldermen; and Holt C. J. thought the Word Aldermen was Surpluſage, and the Writ well enough; Powell J. contra, Writs ought to be directed to thoſe, and to thoſe only that are to obey the Writ: How will People know who are to obey the Writ if the Direction is inſignificant or immaterial? If a Writ be directed to the Coroner and Sheriff where it ought to be to one only, it is naught: Powys and Gould Juſtices agreed, and the Writ was quaſhed.

(6) Writ of *Mandamus* ought to be directed to the Perſons who are to do the Act.

Anonymus. Trin. 13 Ann. In Canc'.

(7) *Ne exeat Regnum* to ſtay H.'s going to *Scotland* ſince the Union.

A Ne exeat Regnum was granted to ſtay the Defendant from going to Scotland; for tho' that is not out of the Kingdom, yet it is out of the Reach of the Proceſs of this Court, and within the ſame Miſchief.

Placita

Placita coram Domino Rege apud Weſtm. de termino Paſchæ Anno Regni Domini Willi. Tertii nunc Regis Angliæ, &c. Septimo. Rotulo 242.

Sir John Dalſton *verſus* Janſon. Vide fo. 10.

London, ff. *Memorandum*, Quod al. ſcilt. termino Sancti Hill. ultimo præterito coram Domino Rege apud Weſtm. venit Johan. Dalſton Mil. & Bar. per Johannem Pratt Attorn. ſuum & protulit in cur. dicti Domini Regis tunc ibidem quandam billam ſuam verſus Joſhuam Janſon communem Portatorem in Cuſtod. Marr. &c. de placito tranſgr. ſuper caſum. Et ſunt pleg. de proſequend. ſcilt. Johannes Roe & Richardus Doe. Quæ quidem billa ſequitur in hæc verba ff. London. ff. Johannes Dalſton Mil. & Barr. queritur de Joſhua Janſon Communi Portatore in Cuſtod. Marr. Mareſc. Domini Regis coram ipſo Rege exiſten. pro eo videlt. quod cum præd. Joſhua decimo ſexto die Martii Anno Domini Milleſimo ſexcenteſimo nonageſimo tertio & diu antea & ſemper poſtea fuit & hucuſque exiſtit communis Portator, Anglice *Carrier*, bonorum & catallorum & pro ejus proficuo bona & catalla quarumcunque perſonarum hujuſmodi cariationem requirent. a Wakefield in Com. Eborum uſque ad London & a London prædict. uſque ad Wakefield præd. per totum idem tempus pro mercede proinde habend. portare & carriare conſuevit. Cumque per legem & conſuetudinem hujus Regni Angl. quilibet communis portator bonorum & catallorum qui bona & catalla alicujus perſon. recepit ſic portand. eadem abſque ſubtraction. & amiſſion. cuſtodire & portare tenetur Ita quod in defectu talis communis Portator. ſeu ſervien. ſui dampnum non eveniat ullo modo. Cumque idem Johannes eodem decimo ſexto die Martii Anno Domini Milleſimo ſexcenteſimo nonageſimo tertio ſupradicto apud London prædict. videlt. in Paroch. beatæ Mariæ de Arcubus in Warda de Cheape poſſeſſionat. fuit de bon. & catall. ſequen. videlt. de una Pyxide abiegna, Anglice, *a Deal-Box*, & Centum Peciis cuneat. auri vocat. *Guinea's* legalis monetæ Angliæ ut de bonis & catallis ſuis propriis. Et præd. Johannes ſic inde poſſeſſionat. exiſten. eodem decimo ſexto die Martii Anno Domini Milleſimo ſexcenteſimo nonageſimo tertio ſupradicto apud London præd. videlt. in Paroch. & Warda præd. Pyxidem præd. cum præd. Centum Peciis auri cuneat. in eadem exiſten. præfat. Joſhuæ ad eadem

Count upon the Cuſtom of the Realm againſt a common Carrier.

a London præd. uſque ad Wakefield præd. in Com. Eborum præd. pro mercede Salvo & ſecur. cariand. & ibidem eidem Johanni deliberand. deliberavit & præd. Joſhua præd. Pyxidem & præd. Centum pecias auri in eadem exiſten. adtunc & ibidem ad portand. & deliberand. in forma præd. recepit & habuit præd. tamen Joſhua ad aliquod tempus poſtea hucuſque Pyxidem prædict. cum præd. centum peciis auri in eadem exiſten. eidem Johanni non deliberavit ſed pyxis præd. & præd. centum peciæ auri cuneat. in eadem exiſten. poſtea ſcilt. decimo ſeptimo die Martii Anno Domini Milleſimo ſexcenteſimo nonageſimo tertio ſupradicto apud London præd. in Paroch. & Warda præd. pro defectu bonæ cuſtod. ipſius Joſhuæ perdit. & amiſſa fuer. Cumque etiam præd. decimo ſexto die Martii Anno Domini Milleſimo ſexcenteſimo nonageſimo tertio ſupradicto apud London præd. videlt. in Paroch. & Warda præd. prædictus Johannes poſſeſſionat. fuit de al. bon. & catall. ſequen. videlt. de una pixide abiegna, Anglice, *a Deal-Box*, & centum Peciis cuneat. Auri vocat. *Guinea's* legalis monet. Angl. ut de bon. & catall. ſuis propriis Et ſic unde poſſeſſionat. exiſten. idem Johannes poſtea ſcilt. eodem decimo ſexto die Martii Anno Domini Milleſimo ſexcenteſimo nonageſimo tertio ſupradicto apud London præd. in Paroch. & Warda præd. bona & catalla illa extra manus & poſſeſſion. ſuas caſualiter perdidit & amiſit Quæ quidem bona & catalla poſtea ſcilt. eodem decimo ſexto die Martii Anno Domini Milleſimo ſexcenteſimo nonageſimo tertio ſupradicto apud London præd. in Paroch. & Warda præd. ad manus & poſſeſſion. præd. Joſhuæ per inventionem devener. præd. tamen Joſhua ſciens bona & catalla ult. præd. fore bona & catalla præd. Johannis propria & ad ipſum Johannem de jure ſpectare & pertinere machinans tamen & fraudulenter intendens præd. Johannem in hac parte callide & ſubdole decipere & defraudare bona & catalla ult. præd. eidem Johanni licet ſæpius requiſit. &c. nondum deliberavit ſed bona & catalla ult. mentionat. poſtea ſcilt. decimo ſeptimo die Martii Anno Domini Milleſimo ſexcenteſimo nonageſimo tertio ſupradict. apud London præd. in Paroch. & Warda præd. ad uſum & commodum præd. Joſhuæ propr. convertit & diſpoſuit ad dampnum ipſius Johannis Centum & quinquagint. libr' Et inde producit ſectam, &c.

Trover laid in the ſame, held not joinable.

Et modo ad hunc diem ſcilt. diem Mercur. prox. poſt Quindecim. Paſchæ iſto eodem termino uſque quem diem præd. Joſhua habuit licenc. ad billam præd. interloquend' & tunc ad reſpondend. &c. coram Domino Rege apud Weſtm. venit tam præd. Johannes Dalſton Mil. & Barr. per Attorn. ſuum præd. quam præd. Joſhua per Willielmum Midgeley Attorn. ſuum Et idem Joſhua defend. vim & injur. quando, &c. Et dicit quod ipſe non eſt inde culpabilis. Et de hoc pon. ſe ſuper patriam. Et prædict. Johannes Dalſton inde ſimiliter &c. Ideo ven. inde Jur. coram Domino Rege apud Weſtm. die Martis prox. poſt menſem Paſchæ Et qui nec, &c.

Plea.

&c. ad recogn', &c. quia tam, &c. Idem dies dat. eſt partibus prædictis ibidem, &c.

Placita coram Domina Regina apud Weſtm. de Termino Sancti Michaelis Anno Regni Dominæ Annæ nunc Reginæ Angliæ, &c. Secundo. Rotulo 398.

Comes Banbury *verſus* Woods & Ux'. Vide fo. 5.

London, ff. THomas *Woods* Mercator & Maria Uxor ejus attach. fuer. ad reſpondend. Carolo Comiti Banbury & Mariæ Comitiſſæ Banbury Uxori ejus de placito quare ipſam Comitiſſam ceper. & captam tenent, &c. Et unde iidem Comes & Comitiſſa per Ric'um Longford Attorn. ſuum queruntur quod prædictus Thomas Woods & Maria Ux. ejus Viceſimo die Aprilis Anno Regni Dominæ Annæ nunc Reginæ Angliæ, &c. Secundo apud London præd. videlt. in Paroch. Sanctæ Hellenæ in Warda de Biſhopſgate ipſam Comitiſſam ceper. & ipſam adhuc captam tenent Unde dicunt quod deteriorat. ſunt & dampnum habent ad Valenciam decem Mille Librarum Et inde produc. ſectam, &c. Count *in homine repleg'.*

Et prædictus Thomas Woods & Maria Ux. ejus per Richardum Aſh Attorn. ſuum ven. & pet. Audit. brevis Original. prædict. & retorn. ejuſdem brevis Et eis leguntur in hæc verba ff. Anna Dei Gratia, Angliæ, Scotiæ, Franciæ & Hiberniæ Regina Fidei Defenſor, &c. Vicecomitibus London ſalutem. Cum plur. vobis præceperimus quod juſte & ſine dilatione repleg. fac. Mariam Ux. Caroli Comitis Banbury quam Thomas Woods Mercator & Maria Ux. ejus ceperunt & captam tenent ut dicitur niſi capt. fuit per ſpeciale præceptum noſtrum vel capitalis Juſtic. noſtri vel pro Morte hominis vel pro foreſta noſtra vel pro aliquo alio retto quare ſecundum conſuetud. Angliæ non eſt replegiabilis ne amplius inde clam. audiamus pro defectu Juſtic. vel cauſam nobis ſignifitetis quare mandat. noſtrum alias vobis inde direct. exequi noluiſtis vel non potuiſtis Ac vos ſpretis noſtris prædictis ut accepimus *Oyer* of the Writ.

mus præd. Mariam Ux. præd. Comit. repleg. vel ſaltem cauſam quare id facere noluiſtis vel non potuiſtis nobis ſignificare hactenus non curaveritis in noſtrum ac Mandatorum noſtrorum contemptum manifeſtum ac ipſorum Comit. & Comitiſſæ dampnum non modicum & gravamen de quo miramur quamplurimum & movemur Vobis adhuc præcipimus firmiter injungen. quod prædictam Mariam Ux. præd. repleg. faciat. juxta tenorem mandatorum noſtrorum præd. prius vobis inde direct. vel vos ipſi ſitis coram nobis à die Sancti Michaelis in unum Menſem ubicunque tunc fuerimus in Angl. oſtenſ. quare mandat. noſtra præd. toties vobis inde direct. exequi contempſiſtis Et habeatis ibi hoc breve Teſte me ipſa apud Weſtm. Viceſimo ſecundo die Junii Anno Regni noſtri ſecundo (Cæſar) Virtute iſtius brevis nobis direct certificamus quod null. aliud breve vel mandat. dictæ Dominæ Reginæ infraſcript. de replegiando infra nominat. Mariam Ux. Caroli Comit. Banbury quam infra nominat. Thomas Woods & Maria Ux. ejus ceperint & captam tenent prout interius ſpecificat. quam iſtud breve de plur. repleg. præd. Mariam Ux. Caroli Comit. Banbury ad manus noſtras devenerunt, nec eorum alterum devenit, nec nobis deliberatum fuit. Et ulterius dictæ Dominæ Reginæ certificamus quod prædicta Maria Uxor Caroli Comitis Banbury elongat. eſt ad loca nobis incogn. per præd. Thomam Woods & Mariam Ux. ejus per quod prædictam Mariam Ux. Caroli Comitis Banbury repleg. non poſſumus prout interius nobis præcipitur. Reſponſ. Giberti Heathcote Militis & Joſephi Wolfe Armigeri Vic. Quibus lectis & auditis iidem Thomas Woods & Maria Ux. ejus petunt judicium de brevi præd. quia dicunt quod per formam Statut. additio de Villa vel Hamlett. ſeu loco & Com. Comorand ipſius Thomæ in præd. brevi Original. præd. Caroli Comit. Banbury & Mariæ Comitiſſæ Banbury Ux. ejus contineri debuit Et hoc parati ſunt verificare Unde ex quo hujuſmodi additio in eodem brevi non continetur iidem Thomas & Maria petunt judicium de brevi prædict. Et quod breve prædict. caſſetur, &c.

Plea in Abatement.

Et prædictus Carolus Comes Banbury & prædicta Maria Comitiſſa Banbury Ux. ejus dicunt quod per aliqua per prædictos Thomam & Mariam Ux. ejus ſuperius in caſſation. brevis placitat. breve ipſorum Comitis & Comitiſſæ caſſari minime debet quia dicunt quod placitum præd. per præd. Thomam & Mariam Ux. ejus modo & forma præd. ſuperius placitat. materiaq; in eodem content. minus ſufficien. in lege exiſtunt ad breve ipſorum Comitis & Comitiſſæ prædict. caſſand. Ad quod quidem placitum ipſi iidem Comes & Comitiſſa neceſſe non habent nec per legem terræ tenentur aliquo modo reſpondere Et hoc parati ſunt verificare Unde pro defectu ſufficien. placiti ipſorum Thomæ & Mariæ Ux. ejus in hac parte ipſi iidem Comes & Comitiſſa petunt judicium & quod breve ipſorum Comitis & Comitiſſæ bon. adjudicetur

Demurrer.

dicetur Et quod præd. Thomas & Maria ad breve illud ulterius reſpondeant, &c.

Et prædicti Thomas Woods & Maria Ux. ejus dicunt quod placitum præd. per ipſos Thomam & Mariam modo & forma præd. ſuperius placitat. materiaque in eodem content. bon. & ſufficien. in lege exiſtunt ad breve præd. ipſorum Comitis & Comitiſſæ caſſand. quod quidem placitum materiamque in eodem content. ipſi iidem Thomas & Maria parati ſunt verificare prout Cur', &c. Et quia præd. Comit. & Comitiſſa ad placitum ill. non reſpond. nec ill. hucuſque aliqualiter dedic. ipſi iidem Thomas & Maria ut prius petunt judicium de brevi præd' Et quod breve ill. caſſetur &c. Sed quia Cur. dictæ Dominæ Reginæ nunc hic de judicio ſuo de & ſuper præmiſſis reddend. nondum adviſatur dies inde datus eſt partibus prædictis coram Domina Regina uſq; ..... ubicunq; &c. de judicio ſuo de & ſuper præmiſſis ill. audiend' Eo quod Cur. dictæ Dominæ Reginæ nunc hic inde nondum &c. Joinder.

Placita coram Domina Regina apud Weſtm. de termino Sancti Michaelis Anno Regni Dominæ Annæ nunc Reginæ Angl' &c. Primo. Rot. 344.

Haywood *verſus* Davies, & al'. Vide fo. 4.

Middl. ſſ. MEmorandum, Quod die Veneris prox. poſt tres ſeptimanas Sancti Michaelis iſto eodem termino coram Domina Regina apud Weſtm. ven. Rebecca Haywood per William Smyth Attorn. ſuum Et profert in Cur. dictæ Dominæ Reginæ nunc hic quandam billam ſuam verſus Margaret Davis als. Daviſon & Mariam Bonner in Cuſtod. Marr', &c. de placito tranſgr' Et ſunt pleg. de proſequend. ſcilt. Johannes Doe & Richardus Roe quæ quidem billa ſequitur in hæc verba ſcilt. Midd. ſſ. Rebecca Haywood queritur de Margareta Davis als. Daviſon & Maria Bonner in Cuſtod. Mar. Mareſc. Dominæ Reginæ coram ipſa Regina exiſten. de eo quod ipſæ eædem Margaret. & Maria primo die Octobris Anno Regni Dominæ Annæ nunc Reginæ Angl', &c. primo

Treſpaſs for breaking and entring the Plaintiff's Cloſe and Yard, and diſturbing the Poſſeſſion.

vi & armis &c. Clauſum & aream ipſius Rebeccæ apud Paroch. de Stebunheath als. Stepney in Com. Middleſex prædict. freger. & intraver. & ipſam Rebeccam in quiet. uſu & occupation. clauſi & Areæ præd. adtunc & ibidem diſturbaver. & impediver. necnon de eo quod ipſæ eædem Margaret. & Maria poſtea ſcilt. die & Anno ſupradict. vi & armis &c. al. clauſum & aream ipſius Rebeccæ apud Paroch. & Com. præd. freger. & intraver. & quingent. ſiculas aquæ Anglice vocat. *Pails of Water* & al. aquam ipſius Rebeccæ ad valenc. vigint. ſolid. a quodam fonte ipſius Rebeccæ apud Paroch. & Com. præd. exiſten. ſine licenc. ipſius Rebeccæ & contra ejus voluntat. ab & ex fonte præd. adtunc & ibidem ceper. & aſportaver. necnon de eo quod ipſæ eædem Margareta & Maria poſtea ſcilt. eiſdem die & Anno ult. ſupradict. vi & armis, &c. magnam quantitat. cœni ſoli & aquæ in & ſuper terram & al. Aream ipſius Rebeccæ apud Paroch. & Com. præd. adtunc & ibidem poſuer. locaver. effund. & projecer' Et al. enormia eidem Rebeccæ adtunc & ibidem intuler. contra pacem dictæ Dominæ Reginæ nunc Et ad dampnum ipſius Rebeccæ trigint. & novem ſolid. Et inde produc. ſectam &c.

Plea of Tenancy in Common in Abatement.

Et prædict. Margaret. & Maria in propriis perſonis ſuis ven. & defend. vim & injur' &c. Et petunt judicium de billa præd. ipſius Rebeccæ & quod billa ill. caſſetur quia dicunt quod clauſum & area necnon loci in quibus ſupponitur tranſgr. præd. fieri ſunt & dicto tempore quo &c. fuer. una acra terræ quodque prædict. Rebecca dicto tempore quo &c. nichil habuit in eadem acra terræ niſi inſimul & pro indiviſo cum prædict. Maria Bonner quæ in plena vita exiſt. apud Paroch. de Stepney in Com. Middleſex Et hoc parat. ſunt verificare Unde petunt judicium de billa præd. & quod billa ill. caſſetur &c.

Repl'.

Et præd. Rebecca dicit quod billa ipſius Rebeccæ præd. ratione præallegat. caſſari non debet quia dicit quod ipſa ſeperal. temporibus ſeperal. tranſgr. præd. fieri ſuppoſit. fuit ſola ſeiſita de præd. clauſo & area in narr. ipſius Rebeccæ prius mentionat' Acetiam de præd. clauſo & area in Narr. præd. ipſius Rebeccæ ſecundo mentionat. & de præd. fonte in Narr. ill. ſimiliter mentionat' Acetiam de tertia Area in Narr. præd. ipſius Rebeccæ tertio mentionat' Quodq; præd. Margareta & Maria dict. ſeperal. tempor. quibus, &c. ſeperal. tranſgr. præd. fecer. prout eadem Rebecca per Narr. ſuam præd. ſuperius verſus eas queritur Abſque hoc quod

Traverſe of the Tenancy in Common.

prædict. Maria Bonner reſpectivis tempor. præd. aut aliquo eorum aliquod habuit in præmiſſ. ill. aut eorum aliquo Et hoc petit quod inquiratur per patriam.

Demurrer.

Et præd. Margareta Davis als. Daviſon & Maria Bonner dicunt quod placitum præd. per ipſam Rebeccam Haywood modo & forma præd. ſuperius replicando placitat. materiaq; in eod. content. minus ſufficien. in lege exiſtunt ad ipſas Margaret. & Mariam ad billam præd. ipſius Rebeccæ reſpondere compellend. ad quod quidem

placitum ipſæ eædem Margaret. & Maria neceſſe non habent nec per legem terræ tenentur aliquo modo reſpondere Et hoc paratæ ſunt verificare Unde pro defectu ſufficien. replication. ipſius Rebeccæ in hac parte ipſæ eædem Margaret. & Maria ut prius petunt judicium de billa præd. ipſius Rebeccæ Et quod billa ill. caſſetur Et pro cauſis moration. in lege in hac parte juxta formam ſtatuti in hujuſmodi caſu nuper edit. & proviſ. præd. Margaret. & Maria Cur. hic oſtend. has cauſas ſubſequent. de eo quod placitum præd. ipſius Rebeccæ eſt duplex incertum & caret forma & concludit ad patriam.

Et præd. Rebecca Haywood dicit quod placitum præd. per ipſam Rebeccam modo & forma præd. ſuperius repl. placitat. materiaq; in eodem content. bon. & ſufficien. in lege exiſt. ad ipſas Margaret. Davis & Mariam Bonner ad billam præd. ipſius Rebeccæ reſpondere compellend' Quod quidem placit. materiamque in eodem content. eadem Rebecca parata eſt verificare & probare prout Cur' &c. Et quia præd. Margaret. & Maria ad placitum ill. non reſpond. nec ill. hucuſque aliqualit. dedic. eadem Rebecca petit judicium & quod præd. Margareta & Maria ad bill. præd. ipſius Rebeccæ ulterius reſpondeant &c. Sed quia Cur. dictæ Dominæ Reginæ nunc hic de judicio ſuo de & ſuper præmiſſ. reddend. nondum adviſatur dies inde datus eſt partibus prædictis coram Domina Regina apud Weſtm. uſque diem Martis prox. poſt Octab. Sancti Martini de judicio ſuo de & ſuper præmiſſ. ill. audiend. eo quod Cur. dictæ Dominæ Reginæ nunc hic inde nondum &c.

Joinder in Demurrer.

Reſpondeas Ouſter Agard.

Placita

Placita coram Domina Regina apud Weſtm. de Termino Sancti Michaelis Anno Regni Dominæ Annæ nunc Reginæ Magnæ Britanniæ &c. Quinto. Rotulo 439.

Stroud *verſus Lady* Gerrard. Vide fo. 8.

Middl. ff. MEmorandum, Quod die Mercur. prox. poſt tres ſeptiman. Sancti Michaelis iſto eodem Termino coram Dom. Regina apud Weſtm. ven. Thomas Stroud per Daniel. Browne Attorn. ſuum Et profert in curia dictæ Dominæ Reginæ nunc hic quandam billam ſuam verſus Dominam Elizabetham Gerard als. Garret in Cuſtod. Mar' &c. de placito tranſgreſſion. ſuper caſum Et ſunt pleg. de proſequend. ſcilt. Johannes Doe & Richardus Roe quæ quidem billa ſequitur in hæc verba ff. Middl. ff. Thomas Stroud queritur de Domina Elizabetha Gerard als. Garret in Cuſtod. Mar. Mareſc. Dominæ Reginæ coram ipſa Regina exiſten. pro eo videlt. quod cum prædict. Elizabetha decimo die Octobris Anno Regni Dominæ Annæ nunc Reginæ Angl' &c. quinto apud Paroch. Sancti Clementis Dacorum in Com. Middl. præd. indebitat. fuiſſet eidem Thomæ in quindecim libr. legalis Monet. Angl. tam pro diverſis operibus lapidarii Anglice, *Maſons Works*, per ipſum Thomam pro præfata Elizabetha ad ſpecial. inſtant. & requiſition. ipſius Elizabethæ ante tunc fact. & performat. quam pro lapide & aliis materialibus & rebus neceſſar. in & circa faction. & performation. operum præd. uſis & impenſ. per ipſum Thomam ad ſimiles inſtant. & requiſition. ipſius Elizabethæ invent. & provis' Et ſic inde indebitat. exiſten. ipſa eadem Elizabetha in Conſideration. inde ſuper ſe aſſumpſit & eidem Thomæ adtunc & ibidem fideliter promiſit quod ipſa eadem Elizabetha cum inde poſtea requiſit. eſſet præd. quindecim libr. eidem Thomæ bene & fidelit. ſolvere & contentare vellet Cumque etiam præd. Thomas poſtea ſcilt. eiſdem die & anno ſupradict. apud Paroch. præd. in Com. præd. ad ſimiles inſtant. & requiſition. ipſius Elizabethæ feciſſet & performaſſet pro præd. Elizabetha diverſa alia opera lapidarii Anglice, *Maſons Works*, & inveniſſet & providiſſet & uſus fuiſſet lapides & alias material. & res neceſſar. in & circa faction. & performation. operum præd. ult. mentionat. præd. Elizabetha in conſ. inde poſtea ſcilt. eiſdem die & anno ſupradict. apud paroch.

Indebitatus Aſſumpſit for Maſons Work and Materials found.

Quantum meruit for the ſame.

præd. in Com. præd. ſuper ſe aſſumpſit & præfat. Thomæ adtunc & ibidem fideliter promiſit quod ipſa eadem Elizabetha tam tantas denar. ſummas quant. idem Thomas pro præd. al. operibus lapidarii Anglice, *Maſons Works*, ult. mentionat. tempore confection. & performation. eorundem rationabilit. habere meritus fuit. quam tant. denar. ſummas quant. præd. lapides & al. material. & res neceſſar. ult. mentionat. tempore invention. & proviſion. eorundem rationabilit. valebant eidem Thomæ cum inde poſtea requiſit. eſſet bene & fidelit. ſolvere & contentare vellet Et prædict. Thomas in facto dicit quod ipſe præd. Thomas pro prædictis aliis operibus lapidarii ult. mentionat. tempore confection. & performation. eorundem rationabiliter habere meritus fuit al. quindecim libr. ſimilis legalis monet. Angl. quodque præd. lapides & al. material. & res neceſſar. ult. mentionat. tempore inventionis & proviſionis eorundem rationabiliter valebant al. quindecim libr. conſimilis legalis monet. Angl. ſcilt. apud paroch. præd. in Com. præd. unde præd. Elizabetha adtunc & ibidem notic. habuit Cumque etiam præd. Elizabetha poſtea ſcilt. eiſdem die & anno ſupradict. apud paroch. præd. in Com. præd. indebitat. fuiſſet præfat. Thomæ in al. quindecim libr. ſimilis legalis monet. Angl. tam pro al. opere arti lapidarii ſpectan. Anglice, *Maſons Work*, pro præd. Elizabetha per eundem Thomam ad ſimiles ſpecial. inſtant. & requiſition. ipſius Elizabethæ ante tempus ill. operat. & fact. ac pro diverſis materialibus & rebus neceſſar. in & circa idem opus uſitat. per præd. Thomam ad ſimiles inſtant. & requiſition. ipſius Elizabethæ ante tunc empt. invent. & proviſ. quam pro diverſ. denar. ſummis pro præd. Elizabetha per eundem Thomam ad ſimiles inſtant. & requiſition. ipſius Elizabethæ ante tempus ill. erogat. & extrapoſit. Et ſic inde indebitat. exiſten. eadem Elizabetha poſtea ſcilt. die & anno ſupradict. apud paroch. præd. in Com. præd. in conſideratione inde ſuper ſe aſſumpſit & eidem Thomæ adtunc & ibidem fideliter promiſit quod ipſa eadem Elizabetha præd. ult. mentionat. quindecim libr. præfat. Thomæ cum inde poſtea requiſit. eſſet bene & fidelit. ſolvere & contentare vellet Cumque etiam præd. Elizabetha poſtea ſcilt. eiſdem die & anno ſupradict. apud paroch. præd. in Com. præd. in conſideration. quod præd. Thomas ad ſimiles ſpecial. inſtant. & requiſition. ipſius Elizabethæ operaſſet & feciſſet pro eadem Elizabetha al. opus arti lapidarii prædict. ſpectan. ſuper ſe aſſumpſit & eidem Thomæ adtunc & ibidem fideliter promiſit quod ipſa eadem Elizabetha vigint. libr. ſimilis legalis monet. Angl. pro præd. ult. mentionat. opere per eundem Thomam pro præd. Elizabetha ſic ut præfertur operat. & fact. eidem Thomæ cum inde poſtea requiſit. eſſet bene & fideliter ſolvere & contentare vellet Prædicta tamen Elizabetha ſeperal. promiſſion. & aſſumption. ſuas prædict. minime curan. ſed mathinan. & fraudulent. intenden. eundem Thomam in hac parte callide & ſubdole decipere & defraudare prædict. ſeperal. denar.

Indebitatus Aſſumpſit tam per opere lapidiar. quam pro material'.

Indebit Aſſ. pro opere.

ſummas ſeu aliquam inde denar. prædict. Thomæ nondum ſolvit (licet ad hoc faciend. præd. Elizabetha per præfat. Thomam poſtea ſcilt. duodecimo die Octobris Anno quinto ſupradict. apud Paroch. præd. in Com. præd. & ſæpius poſtea requiſit. fuit) ſed ill. ei hucuſque ſolvere omnino contradixit & adhuc contradicit Unde idem Thomas dicit quod ipſe deteriorat. eſt & dampnum habet ad valenc. ſexagint. librarum Et inde producit ſectam &c.

Miſnoſmer pleaded in Abatement.

Et Domina Honoria Gerard verſus quam prædict. Thomas exhibuit billam ſuam per nomen Dominæ Elizabethæ Gerard als. Garret in propria perſona ſua venit & defend. vim & injur' &c. Et petit judic. de billa præd. quia dicit quod ipſa baptizat. fuit per nomen Honoriæ ſcilt. apud Paroch. Sancti Clementis Dacorum prædict. & per idem nomen ſemper a baptizatione ſua hucuſque cognit. & nominat. fuit Abſque hoc quod ipſa eadem Honoria modo eſt vel unquam fuit cognit. vel nominat. per nomen Elizabethæ prout per billam præd. ſuperius ſupponitur Et hoc parat. eſt verificare Unde petit judic. de billa prædict' Et quod billa illa caſſetur &c.

Traverſe.

Repl'.

Imparlances *pro Quer'.*

Et prædict. Thomas Stroud petit diem ad placitum præd. interloquend' Et ei conceditur &c. Et ſuper hoc dies inde dat. eſt partibus prædict. coram Domina Regina apud Weſtm. uſq; diem Jovis prox. poſt Octab. Sancti Hillar. videlt. præfat. Thomæ ad placitum præd. interloquend. & tunc ad replicand' &c. Ad quem diem coram Domina Regina apud Weſtm. ven. tam prædict. Thomas Stroud per Attorn. ſuum prædict. quam præd. defend. in propria perſona ſua Et idem Thomas petit diem ad placitum præd. ulterius interloquend' Et ei conceditur &c. Et ſuper hoc dies ulterius inde dat. eſt partibus præd. coram Domina Regina apud Weſtm. uſque diem Mercur. prox. poſt quinden. Paſchæ videlicet præfat. Thomæ ad placitum præd. interloquend. & tunc ad replicand' &c. Ad quem diem coram Dom. Reg. apud Weſtm. ven. tam præd. Thomas Stroud per Attorn. ſuum præd. quam præd. defend. in propria perſona ſua Et idem Thomas dicit quod præd. Domina Gerard als. Garret perſon. verſus quam idem Thomas exhibuit billam ſuam præd. per nomen Dominæ Elizabethæ Gerard als. Garret ad placitum ſuum præd. in caſſation. billæ ipſius Thomæ præd. admitti non debet quia dicit quod ipſa præd. Domina Gerard als. Garrett perſon. verſus quam idem Thomas termino Sancti Michaelis ult. præterit. exhibuit billam ſuam præd. per nomen Dominæ Elizabethæ Gerard als. Garrett iſto eodem termino Sancti Michaelis impoſuit Commune Ballivum in Cur. hic ad ſectam ipſius Thomæ in placito præd. per nomen Dominæ Elizabethæ Garrett prout per record. inde in eadem Cur. dictæ Dominæ Reginæ coram ipſa Regina apud Weſtm. remanen. plenius liquet & apparet Et hoc parat. eſt verificare per record. ill. Unde pet. judic. ſi prædicta Domina Gerard als. Garrett perſon. verſus quam idem Thomas exhibuit billam ſuam præd. per nomen

Replication by Way of Eſtoppel, that the Defendant put in Bail by the Name of *Elizabeth.*

Dominæ Elizabethæ Gerard als. Garrett ad placitum ſuum præd. in caſſation. billæ ſuæ prædict. contra record. prædict. admitti debeat &c.

Et præd. Honoria Gerard verſus quam præd. Thomas exhibuit billam ſuam præd. per nomen Dominæ Elizabethæ Gerard als. Garrett dicit quod placitum præd. per præd. Thomam modo & forma præd. ſuperius replicando placitat. materiaque in eodem content. minus ſufficien. in lege exiſtunt ad ipſam Honoriam ad billam ipſius Thomæ præd. reſpondere compellend' Ad quod quidem placitum ipſa eadem Honoria neceſſe non habet nec per legem terræ tenetur aliquo modo reſpondere Et hoc parat. eſt verificare Unde pro defectu ſufficien. replication. in hac parte ipſa eadem Honoria ut prius petit judicium de billa præd' Et quod billa illa caſſetur &c. Demurrer.

Et præd. Thomas dicit quod placitum præd. per præd. Thomam modo & forma præd. ſuperius replicando placitat. materiaque in eodem content. bon. & ſufficien. in lege exiſtunt ad præd. Elizabetham ad billam præd. ipſius Thomæ inde verſus præd. Elizabetham reſpondere compellend' Quod quidem placitum materiamque in eodem content. idem Thomas parat. eſt verificare & probare prout Cur' &c. Et quia præd. Elizabetha ad placitum illud non reſpond. nec illum hucuſque aliqualit. dedicit ipſe idem Thomas ut prius pet. judicium & quod præd. Elizabetha ad billam ipſius Thomæ præd. reſpondere compellatur &c. Sed quia curia dictæ Dominæ Reginæ nunc hic de judicio ſuo de & ſuper præmiſſ. reddend. nondum adviſatur dies inde dat. eſt partibus præd. coram Domina Regina apud Weſtm. uſque diem prox. poſt de Judicio ſuo de & ſuper præmiſſ. ill. audiend. eo quod Cur. dictæ Dominæ Reginæ nunc hic inde nondum &c. Joinder.

Placita

Placita coram Domino Rege apud Weſtm. de termino Sanctæ Trinitatis Anno Regni Domini Willi. tertii nunc Regis Angliæ &c. decimo. Rotulo 763.

Johnſon *verſus* Long. Vide fo. 10.

Somerſet, ff. *Memorandum*, Quod als. ſcilt. termino Sancti Michaelis ult. præterit. coram Domino Rege apud Weſtm. ven. Timotheus Johnſon per Philippum Hodges Attorn. ſuum & protulit in Cur. dicti Domini Regis tunc ibidem quandam billam ſuam verſus Johannem Long in Cuſtod. Mar' &c. de placito tranſgreſſionis ſuper caſum & ſunt pleg. de proſequend. ſcilicet Johannes Doe & Richardus Roe quæ quidem bill. ſequitur in hæc verb ff. Somerſet ff. Timotheus Johnſon queritur de Johanne Long in cuſtod. Mar. Mareſc. Domini Regis nunc coram ipſo Rege exiſten. pro eo videlt. quod cum præd. Timotheus viceſimo primo die Aprilis Anno Regni Domini Willielmi tertii nunc Regis Angl' &c. octavo & ſemper poſtea hucuſque poſſeſſionat. fuit & adhuc poſſeſſionat. exiſtit de quadam antiqua officina Anglice, *a Work-houſe*, ſituat. & exiſten. in Paroch. de Whatley in Com. præd. in qua quidem officina eodem viceſimo primo die Aprilis Anno octavo ſupradicto & a tempore cujus contrar. memoria hominum non exiſt. fuit quædam antiqua feneſtra in occidental. parte ejuſdem officinæ per quam aer ſaluberrimus & lumen exhilerans eodem viceſimo primo die Aprilis Anno octavo ſupradicto & a toto tempore ſupradict. intrabant & inferebantur & intrare & inferri conſueverunt & ſolebant in magnum emolument. & commoditat. occupator. officinæ præd. Cumq; præd. Johannes viceſimo primo die Aprilis Anno octavo ſupradicto & ſemper poſtea hucuſque poſſeſſionat. fuiſſet & adhuc poſſeſſionat. exiſtit de quadam parcella terræ cum pertin. ſcituat. jacen. & exiſten. in Paroch. de Whatley præd. in Com. præd. officinæ præd. contigue adjacen. & ſic inde poſſeſſionat. exiſten. idem Johannes machinans & fraudulenter intendens eundem Timotheum multipliciter prægravare & opprimere & ipſum Timotheum de Aere & Lumine quæ in officina præd. per feneſtram prædictam intrare & inferri conſuever. & ſolebant & officina præd. horridis tenebris obſtupare & præd. Timotheum de uſu & commoditat. officinæ præd.

Declaration for a Nuſance.

Poſſeſſion alledged in an old Work-houſe, wherein was a Window Time out of Mind.

Defendant's Poſſeſſion in a Piece of Land adjoining thereto.

præd. penitus deprivare præd. viceſimo primo die Aprilis Anno octavo ſupradicto apud Whatley præd. in Com. præd. quendam parietem ſuper præd. parcellam terræ ipſius Johannis tam prope officinam præd. de novo erexit & ædificavit ita quod per eandem erectionem parietis præd. feneſtra præd. prædicto viceſimo primo die Aprilis & ſemper poſtea uſque diem exhibitionis hujus billæ ſcilt. viceſimum tertium diem Octobr. Anno Regni dicti Domini Regis nunc nono multipliciter obſtupat. & obſcurat. fuit per quod idem Timotheus totam commoditat. & eſiament. præd. feneſtr. & juvamen & ſalubritat. aeris & luminis in & ſuper eandem feneſtram ut præfertur intrare & inferri conſuet. & totum uſum & proficuum officinæ præd. a præd. viceſimo primo die Aprilis Anno octavo ſupradict. uſque præd. viceſimum tertium diem Octobris Anno nono ſupradict. totaliter perdidit & amiſit Unde idem Timotheus dicit quod ipſe deterioratus eſt & dampnum habet ad valenc. quadragint. librarum Et inde producit ſectam &c.

Defendant obſtructed the Light, whereby the Plaintiff loſt the Benefit of his Shop.

Et modo ad hunc diem ſcilt. diem Veneris prox. poſt Craſtinum Sanctæ Trin. iſto eodem termino uſq; quem diem præd. Johannes Long habuit licenc. ad billam præd. interloquend. & tunc ad reſpondend' &c. coram Domino Rege apud Weſtm. ven. tam præd. Timotheus per Attorn. ſuum præd. quam præd. Johannes per Jacobum Long Attorn. ſuum Et præd. Johannes defendit vim & injur. quando &c. Et dicit quod præd. Timotheus actionem ſuam præd. inde verſus eum habere ſeu manutenere non debet quia dicit quod præd. Timotheus als. ſcilt. termino Paſchæ Anno Regni dicti Domini Regis nunc octavo in Cur. ipſius Domini Regis coram ipſo Rege hic ſcilt. apud Weſtm. in Com. Middleſex implacitaſſet eundem Johannem Long in quodam placito tranſgr. ſuper caſum narrando verſus eum quod cum idem Timotheus decimo die Octobris Anno Regni Domini Regis nunc ſeptimo & ſemper poſtea uſque tunc fuiſſet & adtunc poſſeſſionat. exiſtebat de quadam antiqua officina Anglice, *a Work-houſe*, ſcituat. & exiſten. in Paroch. de Whatley in Com. præd. & quod in officina ill. eodem decimo die Octobris Anno ſeptimo ſupradicto & a tempore cujus contrar. memoria hominum tunc non exiſtebat fuiſſet quædam antiqua feneſtr. in occidental. parte ejuſdem officinæ & quod per eandem feneſtram aer ſaluberimus & lumen exhilerans eodem decimo die Octobris Anno ſeptimo ſupradicto & a toto tempore ſupradict. intrabant & inferebantur & intrare & inferri conſueverunt & ſolebant in magnum emolument. & commoditat. occupator. officinæ præd. quodq; præd. Johannes præd. decimo die Octobris Anno ſeptimo ſupradict. & ſemper poſtea uſque tunc poſſeſſionat. fuiſſet & adtunc poſſeſſionat. exiſtebat de quadam parcell. terræ cum pertinentiis ſcituat. jacen. & exiſten. in Paroch. de Whatley in Com. prædict. præd. officinæ contigue adjacen. & ſic inde poſſeſſionat. exiſten. idem Johannes machinan. & fraudulenter intenden. eundem Timotheum multipliciter

Imparlance.

Pleads another Action and Recovery for the ſame Nuſance in Bar.

Setting forth a former Declaration.

prægravare & opprimere & ipſum Timotheum de aere & lumine quæ in officinam præd. per feneſtr. præd. inferri & intrare conſuever. & ſolebant & officinam præd. horridis tenebris obſtupare & præd. Timotheum de uſu & commoditat. officinæ præd. penitus deprivare præd. decimo die Octobris Anno ſeptimo ſupradicto apud Whatley præd. in Com. prædict. quendam parietem ſuper præd. parcell. terræ ipſius Johannis tam prope officinam præd. de novo erexit & ædificavit ita quod per eandem erectionem parietis præd. feneſtr. præd. præd. decimo die Octobris & ſemper poſtea uſq; viceſimum diem Aprilis Anno Regni Domini Regis nunc octavo multipliciter obſtupat. & obſcurat. fuit per quod idem Timotheus totam commoditat. & eſiament. prædict. feneſtr. & juvamen & ſalubritat. aeris & luminis in & per eandem feneſtram ut præfertur intrare & inferri conſuet. & totum uſum & proficuum officin. præd. a præd. decimo die Octobris Anno ſeptimo ſupradict. uſq; præd. viceſſimum diem Aprilis Anno octavo ſupradict. totaliter perdidit & amiſit Unde idem Timotheus tunc dixit quod ipſe deteriorat. fuit & dampnum habuit ad valenc. quadragint. libr' Et inde tunc produxit ſectam &c. taliterque ſuperinde in eadem Cur. hic ſcilt. apud Weſtm. præd. poſtquam idem Johannes placitaſſet adinde ibidem quod ipſe non fuit inde culpabil' & per quandam jur. patriæ inde culpabil. invent. fuiſſet proceſſum fuit quod poſtea ſcilt. termino Sancti Michaelis tunc prox. ſequen. per eandem Curiam hic conſiderat. fuit quod præd. Timotheus recuperaret verſus præfat. Johannem quatuordecim libr. pro dampnis ſuis quæ ſuſtin. tam occaſione præmiſſ. in eodem Record. mentionat. quam pro miſis & cuſtag. ſuis per ipſum circa ſectam ſuam in ea parte appoſit. prout per record. inde in eadem curia hic ſcilicet apud Weſtm. præd. reman. plenius liquet & apparet Et idem Johannes ulterius dicit quod præd. officin. feneſtr. erectio & ædificatio parietis præd. in præd. recitat. record. mentionat. & præd. officin. feneſtr. erectio & ædificatio pariet. prædict. in billa ipſius Timothei verſus ipſum Johannem Long modo exhibit. ſuperius mentionat. & expreſſ. ſunt eadem officin. feneſtr. erectio & ædificatio parietis & non alia neque diverſa quodq; præd. Timotheus in præd. recitat. record. querens nominat. & præd. Timotheus ſuperius in billa præd. querens nominat. ſunt una & eadem perſona & non alia neque diverſa Et quod præd. Johannes in præd. recitat. record. defend. nominat. & præd. Johannes in billa præd. ſuperius defend. nominat. ſunt una & eadem perſona & non al. neque diverſ. Et hoc parat. eſt verificare Unde pet. judicium ſi præd. Timotheus actionem ſuam præd. verſus eum habere ſeu manutenere debeat &c.

Judgment in the former Proceedings.

Averment of the Identity.

Demurrer. Et præd. Timotheus dicit quod ipſe per aliqua per præd. Johannem ſuperius placitando allegat. ab actione ſua præd. inde verſus ipſum Johannem habend. præcludi non debet quia dicit quod placitum præd. per præd. Johannem modo & forma præd. ſuperius

placitat. minus ſufficien. in lege exiſtunt ad ipſum Timotheum ab actione ſua præd. inde verſus præd. Johannem habend. præcludend. ad quod quidem placitum ipſe idem Timotheus neceſſe non habet nec per legem terræ tenetur aliquo modo reſpondere Et hoc parat. eſt verificare Unde pro defectu ſufficien. reſponſ. in hac parte idem Timotheus pet. judicium & dampna ſua occaſione præmiſſorum præd. ſibi adjudicari &c.

Et præd. Johannes dicit quod placitum præd. per ipſum Johannem modo & forma præd. ſuperius placitat. materiaq; in eodem content. bon. & ſufficien. in lege exiſtunt ad præd. Timotheum ab actione ſua præd. inde verſus ipſum Johannem habend. præcludend. quod quidem placitum materiamque in eodem content. ipſe idem Johannes parat. eſt verificare & probare prout Cur' &c. Et quia præd. Timotheus ad placitum ill. non reſpond. nec ill. hucuſque aliqualit. dedic. ipſe idem Johannes ut prius pet. judic. & quod præd. Timotheus ab actione ſua præd. verſus ipſum Johannem habend. præcludatur &c. Sed quia Curia dicti Domini Regis nunc hic de judic. ſuo de & ſuper præmiſſ. reddend. nondum adviſatur dies inde dat. eſt partibus prædictis coram Domino Rege apud Weſtm. uſque diem Mercur. prox. poſt octab. Sancti Martini de judic. ſuo inde audiend. eo quod curia dicti Domini Regis nunc hic inde nondum &c. Ad quem diem coram Domino Rege apud Weſtm. ven. partes præd. per Attorn. ſuos præd. ſuper quo viſ. & per Cur. Domini Regis nunc hic plenius intellectis omnibus & ſingulis præmiſſis maturaque deliberatione inde habita videtur Cur. Domini Regis hic quod placitum præd. per præd. Johannem modo & forma præd. ſuperius placitat. materiaque in eodem content. bon. & ſufficien. in lege exiſtunt ad ipſum Timotheum ab actione ſua præd. verſus præd. Johannem habend. præcludend' Ideo conſiderat. eſt quod præd. Timotheus nil capiat per billam ſuam præd. ſed quod ipſe pro falſo clamore ſuo ſit inde in Mi'a &c. Et præd. Johannes eat inde ſine die &c. Et ulterius conſiderat. eſt quod præd. Johannes recuperet verſus præfat. Timotheum ſex libr. & decem ſolid. eidem Johanni pro Miſ. & Cuſtag. ſuis in & circa defenſion. ſuam in hac parte ſuſtent. per Cur. dicti Domini Regis nunc hic ex aſſenſu ſuo juxta formam ſtatut. in hujuſmodi caſu edit. & proviſ. adjudicat' Et præd. Johannes habeat inde execution' &c.

Joinder.

Continuance.

Judgment pro Def.

Placita

Placita coram Domino Rege & Domina Regina apud Weſtm. de termino Paſchæ Anni Regni Domini Willi. & Dominæ Mariæ nunc Regis & Reginæ Angl. Secundo. Rotulo 43.

Payne *verſus* Partridge, & al'. Vide fo. 12.

Cantabr. ff. MEmorandum, Quod als. ſcilt. termino Sancti Michaelis ult. præterit coram Domino Rege & Domina Regina apud Weſtm. ven. Iſaacus Payne per Humfridum Ambler Attorn. ſuum & protulit in Cur. dict. Domini Regis & Dominæ Reginæ tunc ibidem quandam billam ſuam verſus Edvardum Partrich & Willielmum Boulter in Cuſtod. Mar' &c. de placito tranſgreſſionis ſuper caſum Et ſunt pleg. de proſequend. ſcilt. Johannes Doe & Richardus Roe quæ quidem billa ſequitur in hæc verba ſcilt. Cantabr. ff. Iſaacus Payne queritur de Edvardo Partrich Armig. & Willielmo Boulter in Cuſtod. Mar. Mareſc. Domini Regis & Dominæ Reginæ coram ipſis Rege & Regina exiſten. pro eo videlt. quod cum villa de Littleport infra inſulam Elien. in Com. præd. ſit & a toto tempore cujus contrar. memoria hominum non exiſtit fuit antiqua villa cumq; infra præd. villam de Littleport præd. ſit & per totum idem tempus fuit antiquus Rivus vocat. *Wilney River*, & ſuper eundem Rivum & ex tranſverſo ejuſdem a toto tempore ſupradict. fuit antiquum paſſagium apud boreal. oriental. latus ejuſdem villæ de Littleport prope finem viculi Anglice, *a Lane*, vocat. *Ferry Lane*, ducen. a villa de Littleport præd. ad eundem rivum pro tranſitu & tranſportatione ſubditorum hujus Regni Angliæ trans & ultra Rivum ill. tranſire volen. ſcilicet a quodam loco vocat. le *Ferry-Lane* ex boreal. oriental. parte ejuſdem uſque ad quendam locum vocat. *Adventerous Bank* ex boreal. oriental. parte ejuſdem rivi ex tranſverſo rivi ill. aut trorſum ſive retrorſum ad eorum libitum pro tranſitu & tranſportatione equorum equarum & ſpadon. ſuorum Qui quidem tranſitus & aſportatio a toto tempore ſupradicto uſque nuper ſcilicet primum diem Maii Anno Regni Domini Caroli ſecundi nuper Regis Angl' &c. decimo quinto habit. & fact. fuer. in quodam pontone Anglice, *a Ferry-Boat*, per proprietarios & occupatores paſſagii præd. ibidem cuſtodit' Ac proprietarii occupatores & cuſtod. paſſagii & pontonis ill. pro tempore exiſten. ad ill. melius cuſtodiend. & manutenend.

Declaration by an Inhabitant of *Littleport* againſt the Proprietor of a Ferry-boat, for not keeping it in repair.

Preſcription in a Ferry, and Toll for Paſſage.

nend. a toto tempore ſupradict. perceper. & percipere conſuever. de dictis ſubditis hujus Regni Angliæ trans & ultra rivum præd. ſcilt. a præd. loco vocat. le *Ferry-Lane* ad prædictum locum vocat. *Adventerous Bank* ex tranſverſo rivi ill. ſit tranſeundum & tranſportand. (al. quam de inhabitantibus ejuſdem villæ de Littleport in antiquis meſuagiis vel antiquis Cottagiis ibid. commorantibus) quaſdam rationabiles ratas ut Tolnet. ſive cuſtu. ſcilt. un. obulum pro quolibet equo & homine ſuperinde equitan. ac pro quolibet & qualibet equo equa ſeu ſpadone duct. unum quadrantem ac pro quolibet & qualibet equo equa ſeu ſpadone aliter onerat. unum denar. pro hujuſmodi tranſitu & tranſportatione eorum ut præfertur habend. quolibet tempore tranſitus ſui ultra rivum præd. apud paſſagium præd. aut trorſum ſive retrorſum Cumque etiam infra eandem villam de Littleport habeatur & a toto tempore præd. a cujus contrar. memoria hominum non exiſtit habebatur talis antiqua conſuetudo videlicet quod inhabitantes villæ ill. in antiquis Meſuagiis vel antiquis Cottagiis ibidem commoran. habuer. & habere potuer. & a toto tempore præd. habere conſuever. libertatem tranſeundi rivum præd. apud paſſagium præd. ibidem pro ſeipſis equis equabus & ſpadonibus ſuis in pontone præd. ſic ut præfertur tranſportand. aut trorſum & retrorſum ad libertatem ſuam ſine aliqua ſolutione quacunq; pro hujuſmodi tranſitu ſuo ſic habend' Cumque etiam idem Iſaacus primo die Maii Anno Regni Domini Jacobi ſecundi nuper Regis Angl' &c. ſecundo & diu antea & extunc poſtea hucuſque fuit & adhuc exiſtit unus inhabitan. præd. villæ de Littleport in quodam antiquo meſuagio ibidem tunc & adhuc commorans & ea de cauſa & ratione ipſe idem Iſaacus libertat. tranſeundi rivum præd. apud paſſagium præd. in pontone præd. pro ſeipſo equis equabus & ſpadonibus ſuis in forma præd. ſine aliqua ſolutione quacunque pro inde faciend' virtute dictæ conſuetud. habere debuit & debet præd. tamen Edvardus & Willielmus præmiſſor. non ignari ſed machinan. & malitioſe intenden. ipſum Iſaacum minus rite prægravare & magnopere dampnificare & de libertat. tranſitus ſui præd. trans rivum præd. apud paſſagium præd. in pontone præd. ut præfertur habend. deprivare necnon eundem Iſaacum ill. penitus amittere cauſare præd. primo die Maii Anno ſecundo ſupradict. & abinde uſque diem exhibition. billæ præd. ipſius Iſaaci (eiſdem Edvardo & Willielmo adtunc ac antea ac poſtea hucuſque proprietar. occupator. & cuſtod. paſſag. & ponton. præd. exiſten.) nullum pontonem apud paſſagium præd. pro tranſitu ſubditorum hujus Regni ac equorum equarum & ſpadon. præd. trans & ultra rivum ill. tranſire volen. habuer. ſervaver. ſive cuſtodiver. ſed ill. facere habere ſervare vel cuſtodire per tempus præd. totalit. omiſer. & neglexer. ac null. ponto ibidem per tempus præd. aut aliquam partem temporis ill. ibidem fuit vel adhuc exiſtit licet iidem Edvar- & Willielmus præd. primo die Maii Anno ſecundo ſupradicto & ſæpius

Exception of Inhabitants in ancient Meſſuages from paying Toll.

The ſeveral Tolls taken.

Preſcription of Exemption for the Inhabitants in the ancient Meſſuages or Cortages, for free Paſſage.

That the Plaintiff is an Inhabitant in ancient Meſſuage.

Breach in not keeping the Boat.

ſæpius poſtea apud Littleport præd. hujuſmodi ponton. ad paſſagium præd. habere & permittere ipſum Iſaacum libertat. præd. ibidem habere per eundem Iſaacum requiſit. fuiſſent ſic quod idem Iſaacus de libertat. ſua tranſeundi rivum prædict. apud paſſagium præd. in forma præd. juxta conſuetud. præd. habend. a prædicto primo die Maii Anno ſecundo ſupradicto & extunc hucuſque fuit & adhuc eſt impedit. & penitus deprivat. contra conſuetud. præd. ad dampnum ipſius Iſaaci quingentarum librarum & inde producit ſectam &c.

Imparlance.

Et modo ad hunc diem ſcilt. diem Mercur. prox. poſt quinden. Paſchæ iſto eodem termino uſq; quem diem prædict. Edvardus & Willielmus habuer. licenc. ad billam præd. interloquend. & tunc ad reſpondend' &c. coram Domino Rege & Domina Regina apud Weſtm. ven. tam præd. Iſaacus per Attorn. ſuum præd. quam præd. Edvardus & Willielmus per Joſephum Sherwood Attorn. ſuum & præd. Edvardus & Willielmus defend. vim & injur. quando &c. & dicunt quod præd. Iſaacus actionem ſuam præd. inde verſus eos habere ſeu manutenere non debet Quia proteſtando quod tranſit. & portatio perſonar. equorum equarum & ſpadon. trans & ultra rivum præd. non habit. ſeu fact. fuer. in aliquo pontone Anglice, *a Ferry-Boat*, cuſtodit. pro tranſitu & tranſportatione perſonarum ſeu averiorum in loco ubi ac modo & forma prout per Narration. præd. ſuperius ſupponitur Proteſtandoque quod infra præd. vill. de Littleport non eſt nec unquam fuit aliqua talis conſuetud. qual. in narration. præd. ſuperius ſupponitur & allegatur Proteſtando etiam quod præd. Iſaacus non eſt nec unquam fuit unus Inhabitant. præd. vill. de Littleport in aliquo antiquo meſuagio ibidem commorans modo & forma prout per narration. præd. ſuperius ſupponitur pro placito iidem Edvardus & Willielmus dicunt quod diu antea præd. tempus in quo &c. ſcilt. primo die Maii Anno Regni dicti nuper Regis Caroli ſecundi decimo quinto ſupradicto ipſe idem Edvardus ad onera & cuſtag. ipſius Edvardi propr. erexit ædificavit & locavit. in & ſuper rivum præd. & ex tranſverſo ejuſdem rivi apud paſſagium præd. quendam pontem ex ligno & lapidibus confect. pro uſu eaſiament. tranſitu & tranſportation. omn. & ſingularum perſonarum equorum equarum & ſpadon. ibidem venien. ac trans & ultra rivum ill. apud paſſagium præd. tranſire volen. quem quidem pontem ſic ibidem erect. & locat. idem Edvardus ibidem de tempore in tempus & ad omnia tempora poſt confection. inde hucuſq; bene & ſufficient. habuit ſervavit & manutenuit reparavit & cuſtodivit & adhuc ibidem habet ſervat manutenet & cuſtodit ita quod idem Iſaacus & omnes & ſingulæ perſonæ equi equæ & ſpadon. ibidem venien. ac trans & ultra rivum præd. apud paſſagium præd. tranſire volen. in per & ſupra pontem præd. trans & ultra rivum præd. abſq; aliquo periculo apud paſſagium præd. tutius melius & celerius quam in pontone Anglice, *a Ferry-Boat*, ibidem ire redire &

Proteſtando, that the Paſſage was not in a Boat.

Proteſtandq; no ſuch Cuſtom.

Proteſtando etiam, that the Plaintiff was not an Inhabitant in any old Meſſuage.

Plea, that at their own Charge they built a Bridge in lieu of the Boat, and keep it in repair, more ſafe for Paſſage than the Boat.

tranſire de tempore in tempus & ad omnia tempora poſt confection. & location. pontis præd. ibidem hucuſque potuer. & adhuc poſſunt Per quod iidem Edvardus & Willielmus nullum pontonem apud paſſagium præd. habuer. ſervaver. ſeu cuſtodiver. ſed ill. facere habere ſervare vel cuſtodire omiſer. & neglexer. prout eis ex cauſa præd. bene licuit Et hoc parat. ſunt verificare Unde petunt judic. ſi præd. Iſaacus actionem ſuam præd. inde verſus eos habere ſeu manutenere debeat &c.

For which Reaſon they omitted to keep the Boat.

Et præd. Iſaacus dic. quod ipſe per aliqua per præd. Edvardum & Willielmum ſuperius allegat. ab actione ſua præd. inde verſus ipſos habend. præcludi non debet quia dicit quod idem Iſaacus per aliquem pontem libertat. paſſagii præd. trans & ultra rivum præd. ſecundum conſuetud. in narr. præd. mentionat. habere non permiſſus fuit contra conſuetud. præd' Et hoc parat. eſt verificare Unde petit judic. & dampna ſua occaſione præmiſſorum ſibi adjudicari &c.

Reply, That he was not permitted to paſs over any Bridge.

Et præd. Edvardus & Willielmus dicunt quod placitum præd. per præd. Iſaacum modo & forma præd. ſuperius replicando placitat. materiaque in eodem content. minus ſufficien. in lege exiſtunt ad actionem ipſius Iſaaci præd. verſus ipſos Edvardum & Willielmum habend. manutenend. ad quod iidem Edvardus & Willielmus neceſſe non habent nec per legem terræ tenentur aliquo modo reſpondere Et hoc parat. ſunt verificare Unde pro defectu ſufficien. replication. in hac parte iidem Edvardus & Willielmus ut prius petunt judicium Et quod præd. Iſaacus ab actione ſua præd. verſus ipſos Edvardum & Willielmum habend. præcludatur &c.

Demurrer.

Et præd. Iſaacus dicit quod placitum præd. per eundem Iſaacum modo & forma præd. ſuperius replicando placitat. materiaq; in eodem content. bon. & ſufficien. in lege exiſtunt ad action. ipſius Iſaaci verſus eoſdem Edvardum & Willielmum habend. manutenend. quod quidem placitum materiamq; in eodem content. idem Iſaacus parat. eſt verificare & probare prout Cur. &c. Et quia præd. Edvardus & Willielmus ad placitum ill. non reſpond. nec ill. hucuſque aliqualit. dedicunt idem Iſaacus ut prius petit judic. & dampna ſua occaſione præmiſſ. ſibi adjudicari &c. Sed quia Cur. dicti Domini Regis & dictæ Dominæ Reginæ nunc hic de judicio ſuo de & ſuper præmiſſ. reddend. nondum adviſatur dies inde dat. eſt partibus prædict. coram Domino Rege & Domina Regina apud Weſtm. uſq; diem Veneris prox. poſt craſtinum Sanctæ Trinitat. de judic. ſuo de & ſuper præmiſſ. ill. audiend. eo quod Cur. dict. Domini Regis & Dominæ Reginæ nunc hic inde nondum &c. Ad quem diem coram Domino Rege & Domina Regina apud Weſtm. ven. partes præd. per Attorn. ſuos præd' Sed quia Cur. Domini Regis & Dominæ Reginæ de judic. ſuo de & ſuper præmiſſ. reddend. nondum adviſatur dies inde dat. eſt partibus præd. coram Domino Rege & Domina Regina apud Weſtm. uſq; diem Jovis prox.

Joinder.

Continuances.

prox. poſt tres ſeptiman. Sancti Michaelis de judic. ſuo inde audiend. eo quod Cur. dicti Domini Regis & Dominæ Reginæ nunc hic inde nondum &c. Ad quem diem coram Domino Rege & Domina Regina apud Weſtm. ven. partes præd. per Attorn. ſuos præd' Sed quia Cur. dict. Domini Regis & Dominæ Reginæ nunc hic de judic. ſuo de & ſuper præmiſſ. reddend. nondum adviſatur dies inde dat. eſt partibus præd. coram Domino Rege & Domina Regina apud Weſtm. uſq; diem Veneris prox. poſt Octab. Sancti Hillar. de judic. ſuo inde audiend. eo quod Cur. dict. Domini Regis & Dominæ Reginæ nunc hic inde nondum &c. Ad quem diem coram Domino Rege & Domina Regina apud Weſtm. ven. partes præd. per Attorn. ſuos præd' Sed quia Cur. dict. Domini Regis & Dominæ Reginæ nunc hic de judic. ſuo de & ſuper præmiſſ. reddend. nondum adviſatur dies inde dat. eſt partibus præd. coram Domino Rege & Domina Regina apud Weſtm. uſq; diem Mercur. prox. poſt quinden. Paſchæ de judic. ſuo inde audiend. eo quod Cur. dict. Domini Regis & Dominæ Reginæ nunc hic inde nondum &c. Ad quem diem coram Domino Rege & Domina Regina apud Weſtm. venerunt partes præd. per Attorn. ſuos præd. Sed quia curia dict. Domini Regis & Dominæ Reginæ nunc hic de judicio ſuo de & ſuper præmiſſis reddend. nondum adviſatur dies inde datus eſt partibus prædictis coram Domino Rege & Domina Regina apud Weſtmonaſterium uſque diem Sabati prox. poſt Octab. Sanctæ Trinitat. de judicio ſuo inde audiend. eo quod Cur. dictorum Domini Regis & Dominæ Reginæ nunc hic inde nondum &c. Ad quem diem coram Domino Rege & Domina Regina apud Weſtm. ven. partes præd. per Attorn. ſuos præd. Super quo viſ. & per Cur. dict. Domini Regis & Dominæ Reginæ nunc hic plenius intellectis omnibus & ſingulis præmiſſis maturaq; deliberatione inde habita videtur Cur. dict. Domini Regis & Dominæ Reginæ nunc hic quod placitum præd. per præd. Iſaacum modo & forma præd. ſuperius replicando placitat. materiaq; in eodem content. minus ſufficien. in lege exiſt. ad action. ipſius Iſaaci præd. verſus præd. Edvardum & Willielmum habend. manutenend' Ideo conſiderat. eſt quod præd. Iſaacus nil capiat. per billam ſuam præd' Sed pro falſo clamore ſuo ſit inde in Miſericordia &c. Et præd. Edvardus & Willielmus eant inde ſine die &c.

Judic. pro def.

Placita coram Domino Rege apud Weſtm. de termino Sancti Hillarii Anno Regni Domini Willi. tertii nunc Regis Angliæ &c. ſeptimo. Rotulo 697.

Hicks *verſus* Downing. Vide fo. 13.

Somerſet, ſſ. *Memorandum*, Quod als. ſcilt termino Sancti Michaelis ultimo præterito coram Domino Rege apud Weſtm. venit Sara Hickes vid. per Thomam Callow Attorn. ſuum Et protulit in Cur. dicti Domini Regis tunc ibidem quandam billam ſuam verſus Johannem Dowling in Cuſtod. Mar' &c. de placito tranſgr. ſuper caſum Et ſunt pleg. de proſequend. ſcilt. Johannes Doe & Richardus Roe Quæ quidem billa ſequitur in hæc verba ſſ. Somerſet ſſ. Sara Hickes vidua queritur de Johanne Dowling in Cuſtod. Mar. Mareſc. Domini Regis coram ipſo Rege exiſten. pro eo videlicet quod cum præfat. Sara viceſimo ſexto die Januarii Anno Domini Milleſimo ſexcenteſimo nonageſimo ſecundo legitime poſſeſſionat. fuit de & in quodam Meſuagio ſcituat. jacen. & exiſten. in Eaſt Dundry in Com. præd. pro quodam termino Annorum adtunc & adhuc ventur. & inexpirat. Et ſic inde poſſeſſionat. exiſten. eadem Sara eiſdem die & anno ſupradictis apud Eaſt Dundry præd. dimiſit Meſuagium præd. (inter alia) præfat. Johanni Dowling habend. & tenend. eidem Johanni Dowling a viceſimo quinto die Martii tunc prox. ſequen. pro termino trium Annorum ſi præd. Sara Hickes & Johannes Dowling & quidam Thomas Dowling & Editha Pater & Mater ipſius Johannis Dowling tam diu viverent Virtute cujus quidem dimiſſion. præfat. Johannes Dowling poſtea ſcilicet viceſimo ſexto die Martii Anno Domini Milleſimo ſexcenteſimo nonageſimo tertio in Meſuagium præd. intravit & inde (inter alia) poſſeſſionat. fuit pro dicto termino trium Annorum ſuperius ſibi dimiſſ. reverſione inde eidem Saræ pro reſid. dicti termini ſuperius primo mentionat. ſpectan. Ac eadem Sara in facto dicit quod tam præfat. Thomas Dowling & Editha quam præd. Johannes Dowling adhuc ſuperſtites & in plena vita exiſtunt ſcilicet apud Eaſt Dundry præd. prædictus tamen Johannes Dowling præmiſſa ſatis ſcien. ſed machinan. & malitioſe intenden. ipſam Saram in hac parte multiplicit. dampnificare & prægravare idem Johannes Dowling viceſimo die Junii Anno Domini

Declaration, That ſhe was lawfully poſſeſs'd of a Meſſuage for a Term of Years, and demiſed it for three Years to the Defendant, if ſuch Perſons ſhould ſo long live.

Defendant's Entry and Poſſeſſion for his Term, the Reverſion belonging to the Plaintiff.

Averment of Lives.

Breach in negligent keeping his Fire.

Milleſimo ſexcenteſimo nonageſimo quinto (exiſten. de Meſuag. ſupradict. ſic ut præfertur poſſeſſionat. reverſione inde eidem Saræ in forma præd. ſpectan.) ignem ſuum in Meſuagio præd. tam negligent. & improvide cuſtodivit quod ratione inde Meſuagium ill. adtunc combuſt. fuit & totalit. ruinat. exiſtit unde eadem Sara dicit quod deteriorat. eſt & dampnum habet ad Valenciam quingent. librarum Et inde producit ſectam &c.

Imparlance. Et modo ad hunc diem ſcilt. diem Jovis prox. poſt Octabas Sancti Hillarii iſto eodem termino uſque quem diem præd. Johannes habuit licenciam ad billam præd. interloquendi & tunc ad reſpondend' &c. coram Domino Rege apud Weſtm. venit tam præd. Sara per Attorn. ſuum præd. quam præd. Johannes per Samuelem Brewſter Attorn. ſuum Et idem Johannes Dowling defendit vim

Non cul'. & injur. quando &c. Et dicit quod ipſe non eſt inde culpabilis Et de hoc pon. ſe ſuper patriam Et prædicta Sara ſimiliter &c. Ideo ven. inde Jur. coram Domino Rege apud Weſtm. die Mercur. prox. poſt Octabas Purification. beatæ Mariæ Et qui nec &c. ad recogn. &c. quia tam &c. Idem dies dat. eſt partibus prædictis ibidem &c.

Placita coram Domino Rege apud Weſtm. de termino Sanctæ Trinitatis Anno Regni Domini Willi. tertii nunc Regis Angliæ &c. nono. Rotulo 359.

Turbervil *verſus* Stamp. Vide fo. 13.

Dorſet, ff. *Memorandum*, Quod als. ſcilicet termino Paſchæ ult. præterit. coram Domino Rege apud Weſtm. ven. Thomas Turbervile jun. Ar. per Edvardum Lawrence Attorn. ſuum & protulit in Cur. dicti Domini Regis tunc ibidem quandam billam ſuam verſus Johannem Stampe Gen. in Cuſtod. Mar' &c. de placito tranſgr. ſuper caſum Et ſunt pleg. de proſequend. ſcilicet Johannes Doe & Richardus Roe quæ quidem billa ſequitur in hæc verba ff. Dorſet ff. Thomas Turbervile jun. Ar. queritur de Johanne

hanne Stampe Gen. in Cuſtod. Mar. Mareſc. Domini Regis coram ipſo Rege exiſten. pro eo videlicet quod cum ſecundum legem & conſuetud. hujus Regni Angl. hactenus uſitat. & approbat. quilibet homo ejuſdem Regni ignem ſuum die & nocte ſalvo & ſecure cuſtodire teneatur ne pro defectu debit. Cuſtod. ignis hujuſmodi dampnum aliquod alicui de eodem Regno even. ullo modo Cumq; præd. Thomas ſexto die Aprilis Anno Regni Domini Gulielmi tertii nunc Regis Angl' &c. nono poſſeſſionat. fuit de quodam clauſo brueræ jacen. & exiſten. in Paroch. de Stoke in Com. præd. Cumque etiam præd. Johannes die & anno ſupradictis ſimiliter poſſeſſionat. fuit de quodam al. clauſo brueræ prox. adjungen. præd. clauſo brueræ ipſius Thomæ in Paroch. & Com. præd. præd. Johannes die anno & loco ſupradictis tam negligenter & improvide cuſtodivit ignem ſuum in præd. clauſo brueræ ipſius Johannis præd. quod pro defectu debit. cuſtod. ignis præd. bruera & Jampna Anglice, *Heath and Furzes*, ipſius Thomæ ad valenc. quadragint. librarum in præd. clauſo brueræ ipſius Thomæ tunc creſcen. & exiſten. combuſt. fuer. ad grave dampnum ipſius Thomæ & contra conſuetud. præd. unde dicit quod deteriorat. eſt & dampnum habet ad valenc. quadragint. librar' Et inde producit ſectam &c.

Declaration upon the Cuſtom of the Realm for negligent keeping a Fire in the Defendant's Cloſe, whereby the Defendant's Corn was burnt.

Et modo ad hunc diem ſcilt. diem Veneris prox. poſt craſtinum Sanctæ Trin. iſto eodem termino uſque quem diem præd. Johannes habuit licenc. ad billam præd. interloquend. & tunc ad reſpondend' &c. coram Domino Rege apud Weſtm. ven. tam præd. Thomas per Attorn. ſuum præd. quam præd. Johannes per Samuel. Brewſter Attorn. ſuum Et idem Johannes defend. vim & injur. quando &c. & dicit quod ipſe non eſt inde culpabilis & de hoc ponit ſe ſuper patriam & præd. Thomas ſimiliter &c. Ideo ven. inde Jur. coram Domino Rege apud Weſtm. die prox. poſt Et qui nec &c. ad recogn' &c. quia tam &c. idem dies dat. eſt partibus præd. ibidem &c. Poſtea continuat. inde proceſſ. inter partes præd. de placito præd. per jurat. poſit. inde inter eas in reſpect. coram Domino Rege apud Weſtm. uſq; diem Sabbati prox. poſt tres ſeptiman. Sancti Michaelis Niſi juſtic. Domini Regis ad Aſſiſas in Com. Dorſ. capiend. aſſign. prius die Jovis viceſimo ſecundo die Julii apud Dorcheſter in Com. præd. per formam ſtatut' &c. ven. pro defectu Jur' &c. Ad quem diem coram Domino Rege apud Weſtmonaſterium ven. præd. Thomas Turbervile jun. per Attorn. ſuum præd. & præfat. Juſtic. coram quibus &c. miſer. hic record. ſuum coram eis habitum in hæc verba ſſ. Poſtea die & loco infracontent. coram Edvardo Ward Mil. Capital. Baron. Scaccarii Domini Regis & Thoma Rokeby Mil. un. juſtic. Domini Regis ad placita coram ipſo Rege tenend. aſſign. juſtic. ejuſdem Domini Regis ad Aſſiſas in Com. Dorſ. capiend. aſſign. per formam ſtatut' &c. ven. infranominat. Thomas Turbervile junior Armig. per Attorn. ſuum infracontent. & infraſcript. Johannes Stampe Gen. licet ſolempniter exact. non ven. ſed defalt fec. Ideo jurat.

Non cul. and Iſſue.

Venire awarded.

Niſi prius.

Poſtea and Verdict.

Defendant's Default.

jurat. unde fit mentio capiatur verſus eum per defalt' Et jur. juratæ ill. exact. quidam eorum videlicet Thomas Notting, Henricus Kelloway, Richardus Hombourne, Johannes Ford, David Haward, Marcus Dowland, Henricus Humber, Jacobus Squibb, Robertus Woolfrays, vener. & in jur. ill. jurat. exiſtunt Et quia reſid. jur. ejuſdem juratæ non comperuer. Ideo al. de circumſtantibus per Vic. Com. præd. ad hoc elect. ad requiſition. præd. Thomæ Turbervile ac per mandat. juſtic. præd. de novo apponuntur Quorum nomina in panello infraſcript. affilantur ſecundum formam ſtatut. in hujuſmodi caſu nuper edit. & proviſ. Ac jur. de novo appoſit. videlicet Johannes Warren, Willielmus Buſſel & Nathaniel Payne, exact. ſimiliter vener. qui ad veritatem de infracontent. ſimul cum al. jur. præd. prius ad hoc impannellat. & jurat. dicend. elect. triat. & jurat. dicunt ſuper ſacramentum ſuum quod præd. Johannes Stampe eſt culpabilis de præmiſſis infraſcript. interius ei impoſit. prout præd. Thomas Turbervile interius inde verſus eum queritur & aſſidunt dampna ipſius Thomæ occaſione infraſcript. ultra miſ. & cuſtag. ſua per ipſum circa ſectam ſuam in hac parte appoſit. ad octodecim libr. & pro miſis & cuſtag. ill. ad quadragint. ſolid. Ideo conſider. eſt quod præd. Thomas Turbervile recuperet verſus præfat. Johannem Stampe dampna ſua præd. per jur. prædict. in forma præd. aſſeſs. necnon undecim libras pro miſis & cuſtag. ſuis eidem Thomæ Turbervile per Cur. dicti Domini Regis nunc hic ex aſſenſu ſuo de incremento adjudicat. quæ quidem dampna in tot. ſe attingunt ad trigint. unam libras Et præd. Johannes in Miſericordia &c.

Verdict *pro Quer.*

Judgment.

Damages *de incremento.*

Placita coram Domino Rege apud Weſtm. de termino Sanctæ Trinitatis Anno Regni Domini Willielmi tertii nunc Regis Angl' &c. decimo. Rotulo 162.

Robins *verſus* Robins. Vide fo. 15.

Cornub' ff. *Memorandum*, Quod als. ſcilt. termino Paſchæ ultimo præterito coram Domino Rege apud Weſtm. venit. Stephanus Robyns gen. per Edvardum Hoblyn Attorn. ſuum Et protulit in Cur. dicti Domini Regis tunc ibidem quandam billam ſuam verſus Johannem Robyns gen. in Cuſtod. Mar' &c. de placito debiti Et ſunt pleg. de proſequend. ſcilt. Johannes Doe & Richardus Roe Quæ quidem billa ſequitur in hæc verba ff. Cornub. ff. Stephanus Robyns gen. queritur de Johanne Robyns gen. in Cuſtod. Mar. Mareſc. Domini Regis coram ipſo Rege exiſten. pro eo videlt. quod cum præd. Johannes nunquam habuiſſet aliquam legalem cauſam actionis verſus eundem Stephanum ita quod per legem hujus Regni Angl. corpus ipſius Stephani proinde capi & in Priſona quouſque idem Stephanus ſufficien. manucaptores ad reſpondend. eidem Johanni in eadem cauſa inveniret detineri deberet præd. tamen Johannes præmiſſa ſatis ſcien. ſed machinan. & malitioſe intenden. ipſum Stephanum in hac parte minus rite prægravare opprimere & dampnificare & credentiam & reputation. ſuas quantum in ipſo fuit pejorare & detrahere idem Johannes viceſimo octavo die Maii Anno Regni Domini Willielmi tertii nunc Regis Angliæ &c. nono apud Bodmyn in Com. præd. eundem Stephanum prætextu & colore cujuſdam medii proceſſus in lege arreſtari cauſavit ac licet ipſe præd. Stephanus ſemper parat. fuit ad comparend. ſuper tali proceſſu ad diem retorn. inde ad reſpond. eidem Johanni juxta exigenciam ejuſdem proceſſus dictus tamen Johannes eundem Stephanum die & anno ſupradict. apud Bodmyn præd. impriſonari & ibidem in Priſona per ſpacium ſex Menſium pro eo tantum quod præd. Stephanus ſufficien. manucaptor. ad reſpondend. eidem Johanni ſuper proceſſ. præd. invenire non potuiſſet detineri malitioſe procuravit & cauſavit per quod præd. Stephan. grandes denar. ſum. pro ſuſtentation. ſua. in priſona præd. expendere coact. fuit Ac negoc. ipſius Stephani neceſſar. per tempus ill. infecta remanſerunt ac idem Stephanus in modo ſuo vivendi

Caſe for arreſting a Man by Colour of Proceſs, and holding him to Bail, where none was required by Law, after tendring a common Appearance.

magnopere deteriorat. fuit in magnam animi ſui perturbation. & famæ & credentiæ ſuarum læſionem manifeſtam Unde præd. Stephanus dicit quod ipſe deterioratus eſt & dampnum habet ad valenciam centum & quinquagint. librarum Et inde producit ſectam &c.

Et modo ad hunc diem ſcilt. diem Veneris prox. poſt craſtinum Sanctæ Trinitatis iſto eodem termino uſque quem diem præd. Stephanus habuit licenciam ad billam præd. interloquendi & tunc ad reſpondend' &c. coram Domino Rege apud Weſtm. ven. tam præd. Stephanus per Attorn. ſuum præd. quam præd. Johannes per Joſephum Sherwood Attorn. ſuum & præd. Johannes defend. vim & injur. quando &c. & dicit quod ipſe non eſt inde culpabil. & de hoc pon. ſe ſuper Patriam Et præd. Stephanus inde ſimiliter Ideo ven. inde jur. coram Domino Rege apud Weſtm. die Mercur. prox. poſt tres ſeptimanas Sanctæ Trinitatis Et qui nec &c. ad recogn' &c. quia tam &c. Idem dies datus eſt partibus prædictis ibidem &c.

Not guilty pleaded.

Placita coram Domino Rege apud Weſtm. de termino Sancti Hillarii Anno Regni Domini Willielmi tertii nunc Regis Angl' &c. nono. Rotulo 437.

Iveſon *verſus* Moore. Vide fo. 15.

Eborr. ſſ. *Memorandum*, Quod als. ſcilt. termino Sancti Michaelis ultimo præterito coram Domino Rege apud Weſtm. ven. Henricus Iveſon per Edmundum Barker Attorn. ſuum Et protulit in Cur. dicti Domini Regis tunc ibidem quandam billam ſuam verſus Johannem Moore Armigerum & Rutham uxorem ejus Samuelem Bright, Jeremiam Lobley, Henricum Smith & Petrum Blakey in Cuſtod. Mar' &c. de placito tranſgr. ſuper caſum Et ſunt pleg. de proſequend. ſcilt. Johannes Doe & Richardus Roe Quæ quidem billa ſequitur in hæc verba ſſ. Eborr. ſſ. Henricus Iveſon queritur de Johanne Moore Ar. & Rutha Ux. ejus Samuel.

Wright, Jeremia Lobley, Henrico Smith & Petro Blakey in Cuſtod. Mar. Mareſc. Domini Regis coram ipſo Rege exiſten. pro eo videlicet quod cum præd. Henricus Iveſon decimo quarto die Maii Anno Regni Domini Willielmi tertii nunc Regis Angl' &c. nono & diu antea & ſemper poſtea hucuſque poſſeſſionat. fuit & adhuc poſſeſſionat. exiſtit pro quodam termino Annorum adtunc & adhuc ventur. & inexpirat. de & in quadam carbonaria (Anglice, *Colliery*) & miner. carbon. exiſten. ſubter ſolum & terram & in viſceribus cujuſdam clauſi ſive parcell. terræ ſcituat. & jacen. in Paroch. de Whitkirke alias Whitchurch in Com. præd. vocat. *Whitkirke* als. *Whitchurch-fields* & prope adjacen. communi altæ viæ Regiæ in Paroch. præd. ducent. ex boreal. parte a villa de Witherby in Com. præd. in per & trans quandam moram ibidem vocat. *Winmore* & abinde in per & trans quandam venellam ibidem vocat. *Anliſhaw-Lane* & abinde in per & trans villam de Whitkirke als. Whitchurch præd. & ſic retrorſum necnon de & in quadam al. carbonar. & miner. carbonar. exiſten. ſubter ſolum & terram & in viſceribus cujuſdem clauſi moræ ſive parcell. terræ in Paroch. præd. vocat. *Halton Moore* ſcituat. & jacen. & ſimiliter prope adjacen. communi altæ viæ Regiæ præd. ducent. ex boreal. parte a villa de Wetherby præd. in per & trans præd. Moram Winmore & abinde in per & trans venellam præd. vocat. *Anliſhaw-Lane* & abinde in per & trans villam de Halton in Com. præd. & ſic retrorſum in per & trans quam quidem venellam vocat. *Anliſhaw-Lane* Carbones è miner. præd. acquiſit. & effoſſi a clauſis præd. ad loca vicina & circumjacent. carriar. & conveyar. pro re nata ſolit. fuer. & intendebantur Cumque etiam eodem decimo quarto die Maii præd. Henricus Iveſon magnam quantitat. videlt. ducent. carectat. carbon. è miner. præd. effoſ. in clauſis præd. ſeperal. venditioni expon. parat. habuit prædicti Johannes, Rutha, Samuel. Jeremia, Henricus Smith & Petrus præmiſſorum non ignari ſed machinan. & fraudulent. & malitioſe intenden. eundem Henricum Iveſon de uſu & beneficio carbonar. ſuarum præd. impedire decipere & defraudare & emptor. carbon. extra carbonar. præd. effoſ. è carbonar. præd. alienar. & ſeducere ipſoſque ad carbonar. præd. Johannis Moore prope adjacent. in Paroch. præd. appropriar. & procurare poſtea ſcilt. præd. decimo quarto die Maii Anno Regni dicti Domini Regis nunc nono ſupradicto quatuor carectat. magnor. lapidum & unam radicem magni Fraxini in via præd. in venella præd. apud Paroch. præd. poſuer. & locaver. & lapides & radicem Fraxini præd. ibidem remanere per ſpacium unius Menſis permiſerunt & continuaverunt per quæ quidem lapides & radicem Fraxini præd. via præd. in per & trans venellam præd. in tant. obſtupat. & obſtruct. fuit quod carucæ & carriagia pro carriation. & aſportation. carbon. è carbonar. & miner. præd. acquiſit. & effoſ. in per & trans viam præd. per venellam præd. tranſir.

Declaration ſetting forth that he was poſſeſs'd of a certain Term of Years in a Colliery adjoining to the Highway.

And had great Quantities of Coals dug ready for Sale.

But the Defendants maliciouſly intending to hinder Buyers, ſtop'd up the Way.

Whereby the Plaintiff loſt the Sale of his Coals.

tranſir. non potuer. per quod idem Henr. Iveſon beneficium commodum & advantagium carbonar. ſuarum præd. per totum tempus præd. totaliter perdidit & amiſit & carbon. è carbonar. præd. acquiſit. pro defectu emptor. ex cauſa præd. ſic impedit. & obſtruct. magnopere deteriorat. & depretiat. devener. ad dampnum ipſius Henrici quinquaginta librarum Et inde producit ſectam &c.

Imparlance.

Et modo ad hunc diem ſcilicet diem lunæ prox. poſt Octabas Sancti Hillarii iſto eodem termino uſque quem diem præd. Johannes Moore & Rutha Ux. ejus Samuel. Jeremia, Henricus Smith & Petrus habuerunt licentiam ad billam præd. interloquendi & tunc ad reſpondend' &c. coram Domino Rege apud Weſtm. ven. tam præd. Henricus Iveſon per Attorn. ſuum præd. quam præd. Johannes Moore & Rutha Ux. ejus Samuel', Jeremia, Henricus Smith & Petrus per Michaelem Johnſon Attorn. ſuum Et idem Johannes Moore & Rutha Samuel', Jeremia, Henricus Smith & Petrus defend. vim & injur. quando &c. Et dic. quod ipſi in

Non cul. pleaded.

nullo ſunt culpabiles de præmiſſis ſuperius eis impoſit. modo & forma prout præd. Henricus Iveſon ſuperius queritur Et de hoc pon. ſe ſuper patriam Et præd. Henricus Iveſon ſimiliter &c. Ideo ven. inde jur. coram Domino Rege apud Weſtm. die Sabbati prox. poſt Octabas Purification. beatæ Mariæ Virginis Et qui nec &c. ad recogn' &c. Quia tam &c. Idem dies dat. eſt partibus prædictis ibidem &c.

Placita coram Domino Rege apud Weſtm. de termino Sancti Michaelis Anno Regni Domini Willielmi tertii nunc Regis Angliæ &c. decimo. Rotulo 125.

Butcher *verſus* Andrews. Vide fo. 23.

Eſſex, ff. MEmorandum, Quod als. ſcilt. termino Paſchæ ultimo præterito coram Domino Rege apud Weſtm. ven. Thomas Butcher per Radulphum Cole Attorn. ſuum Et protulit in Cur. dicti Domini Regis tunc ibidem quandam billam ſuam verſus Jacobum Andrews in Cuſtod. Mar' &c. de placito tranſgr. ſuper caſum Et ſunt pleg. de proſequend. ſcilicet Johannes Doe & Richardus Roe Quæ quidem billa ſequitur in hæc verba ſcilicet Eſſex ff. Thomas Butcher queritur de Jacobo Andrews in Cuſtod. Mar. Mareſc. Domini Regis coram ipſo Rege exiſten. pro eo videlicet quod cum præd. Jacobus primo die Auguſti Anno Regni Domini Willielmi tertii nunc Regis Angliæ &c. octavo apud Geſtingthorpe in Com. præd. in conſideration. quod idem Thomas Butcher ad ſpecial. inſtanc. & requiſition. ipſius Jacobi mutuo daret & accommodaret cuidam Georgio Andrews filio ipſius Jacobi Andrews aliquam vel aliquas denar. ſummas & venderet & deliberaret eidem Georgio tal. bon. mercimon. & merchandiz. qual. ipſe idem Georgius careret & requireret & fiduciaret, Anglice *Would Truſt*, eidem Georgio pro eiſdem ita quod præd. denar. ſummæ ſic ut præfertur fore accommodand. & valor. præd. bonorum mercimon. & merchandiz. eidem Georgio Andrews per præd. Thomam Butcher deliberand. & vendend. in toto non excederent ſummam quinque librarum legalis monetæ Angliæ ſuper ſe Aſſumpſit & eidem Thomæ Butcher adtunc & ibidem fidelit. promiſit. quod ipſe præd. Jacobus non ſolum omnes tal. denar. ſummas ſic per ipſum Thomam Butcher eidem Georgio Andrews mutuo dand. & accommodand. verum etiam omnes tal. denar. ſummas quant. bon. mercimon. & merchandiz. præd. tempore vendition. & deliberation. eorundem rationabilit. valerent eidem Thomæ Butcher cum inde poſtea requiſit. eſſet bene & fidelit. ſolvere & contentare vellet Et idem Thomas Butcher in facto dicit quod ipſe idem Thomas Butcher poſtea ſcilt. eodem primo die Auguſti Anno octavo ſupradicto apud Geſtingthorpe præd. in Com. præd. ad præd. ſpecial.

Declares in conſideration if he would lend the Defendant's Son, a Sum not exceeding 5 *l.* or truſt him for Goods to that Value, he would pay.

Averment.

cial. inſtanc. ipſius Jacobi mutuo dedit & accommodavit eidem Georgio Andrews ſummam trigint. ſolid. legalis monet. Angl. ac eiſdem die Anno & loco ultim. ſupradict. ad præd. ſpecial. inſtanc. & requiſition. ipſius Jacobi vendidit & deliberavit eidem Georgio Andrews diverſa bon. mercimon. & merchandiz. & fiduciavit præd. Georgio pro eiſdem Quodque bon. mercimon. & merchandiz. præd. tempore vendition. & deliberation. eorundem rationabiliter valebant ſummam trium librarum & decem ſolidorum ſimilis legalis monetæ Angliæ videlicet apud Geſtingthorpe præd. in Com. præd. Unde præd. Jacobus poſtea ſcilicet eodem primo die Auguſti Anno octavo ſupradicto apud Geſtingthorpe præd. in Com. præd. notitiam per eundem Thomam Butcher adtunc & ibidem habuit Cumque etiam præd. Jacobus poſtea ſcilicet eodem primo die Auguſti Anno octavo ſupradicto apud Geſtingthorpe præd. in Com. præd. indebitat. fuiſſet eidem Thomæ Butcher in quinque libris ſimilis legalis monet. Angl. pro tant. denar. ſumma ipſius Thomæ Butcher per præfat. Thomam Butcher ad ſimiles ſpecial. inſtanc. & requiſition. ipſius Jacobi eidem Georgio Andrews ante tempus illud mutuo dat. & accommodat. acetiam indebitat. fuit eidem Thomæ Butcher in al. quinque libris ſimilis legalis monetæ Angliæ pro diverſis bon. mercimon. & merchandiz. per præfat. Thomam Butcher eidem Georgio Andrews ad ſimiles ſpecial. inſtanc. & requiſition. ipſius Jacobi ante tempus illud vendit. & deliberat. ipſoque Jacobo eidem Thomæ Butcher ſic inde indebitat. exiſten. ipſe præd. Jacobus in conſideration. inde poſtea ſcilicet eodem primo die Auguſti Anno octavo ſupradicto apud Geſtingthorpe præd. in Com. præd. ſuper ſe Aſſumpſit & eidem Thomæ Butcher adtunc & ibidem ſimiliter fideliter promiſit quod ipſe præd. Jacobus præd. ſeparal. ſummas quinque libr. & quinque librar. ult. mentionat. eidem Thomæ Butcher cum inde poſtea requiſit. eſſet bene & fidelit. ſolvere & contentare vellet Cumque etiam præd. Jacobus poſtea ſcilicet eodem primo die Auguſti Anno octavo ſupradicto apud Geſtingthorpe præd. in Com. præd. indebitat. fuiſſet eidem Thomæ Butcher in al. quinque libris ſimilis legalis monet. Angliæ pro tant. denar. ſummis ipſius Thomæ Butcher per præfat. Thomam Butcher ad ſimiles ſpecial. inſtanc. & requiſition. ipſius Jacobi pro eodem Jacobo ante tempus illud erogat. & extrapoſit. ipſoque Jacobo eidem Thomæ Butcher ſic inde indebitat. exiſten. ipſe præd. Jacobus in conſideration. inde poſtea ſcilicet eiſdem die & anno ult. ſupradict. apud Geſtingthorpe præd. in Com. præd. ſuper ſe Aſſumpſit ac eidem Thomæ Butcher adtunc & ibidem ſimiliter fideliter promiſit quod ipſe præd. Jacobus præd. quinque libr. ult. mentionat. eidem Thomæ Butcher cum inde poſtea requiſit. eſſet bene & fideliter ſolvere & contentare vellet Præd. tamen Jacobus ſeparal. promiſſion. & aſſumption. ſuas præd. in forma præd. fact. minime curans Sed machinans & fraudulenter intendens eundem Thomam Butcher

Indeb. Aſſump. for 5 *l.* lent the Son at the Plaintiff's Requeſt.

Indeb. Aſſump. for other 5 *l.* laid out, *&c.*

callide & ſubdole decipere & defraudare præd. ſeperal. denar. ſummas ſeu aliquam inde denar. eidem Thomæ Butcher nondum ſolvit nec ei pro eiſdem hucuſque aliqualiter contentavit (licet ad hoc faciend. idem Jacobus poſtea ſcilicet ſecundo die Auguſti Anno octavo ſupradicto apud Geſtingthorpe præd. in Com. præd. per eundem Thomam Butcher requiſit. fuiſſet) Sed ill. ei hucuſque ſolvere ſeu aliqualit. pro eiſdem contentare omnino recuſavit & adhuc recuſat ad dampnum ipſius Thomæ Butcher trigint. librarum Et inde producit ſectam &c.

Et modo ad hunc diem ſcilicet diem lunæ prox. poſt tres ſeptiman. Sancti Michaelis iſto eodem termino uſque quem diem præd. Jacobus habuit licenc. ad billam præd. interloquend. & tunc ad reſpondend' &c. coram Domino Rege apud Weſtm. ven. tam præd. Thomas per Attorn. ſuum præd. quam præd. Jacobus per Johannem Clarke Attorn. ſuum Et idem Jacobus defend. vim & injur. quando &c. Et dicit quod ipſe non Aſſumpſit ſuper ſe modo & forma prout præd. Thomas ſuperius verſus eum queritur Et de hoc pon. ſe ſuper patriam Et præd. Thomas ſimiliter &c. Ideo ven. inde jur. coram Domino Rege apud Weſtm. die prox. poſt Et qui nec &c. ad recogn' &c. quia tam &c. Idem dies dat. eſt partibus præd. ibidem &c. *Non Aſſumpſit.*

Placita coram Domina Regina apud Weſtm. de termino Sancti Hillarii Anno Regni Dominæ Annæ nunc Reginæ Angl' &c. Primo. Rot. 435.

Coggs *verſus* Bernard. Vide fo. 26.

Middl. ſſ. *Memorandum*, Quod als. ſcilt termino Sancti Michaelis ultimo præterito coram Domina Regina apud Weſtm. venit Johannes Coggs per Joſephum Sherwood Attorn. ſuum Et protulit in Cur. dictæ Dominæ Reginæ tunc ibidem quandam billam ſuam verſus Willielmum Barnard in Cuſtod. Mar' &c. de placito tranſgr. ſuper caſum Et ſunt pleg. de proſequend. ſcilicet Johan-

Declaration upon Defendant's Promiſe to take Hogſheads of Brandy out of one Cellar, and ſafely put them in another; for Negligence.

Johannes Doe & Richardus Roe Quæ quidem billa ſequitur in hæc verba ſſ. Middl. ſſ. Johannes Coggs queritur de Willielmo Barnard in Cuſtod. Mar. Mareſc. Dominæ Reginæ coram ipſa Regina exiſten. pro eo videlicet quod cum præd. Willielmus decimo die Novembris Anno Regni Domini Willielmi tertii nuper Regis Angliæ &c. decimo tertio apud Paroch. Sancti Clementis Dacorum in Com. Middleſex præd. aſſumpſiſſet ſalvo & ſecure elevare, Anglice *to take up*, diverſos Cados, Anglice *Casks*, vini aduſti, Anglice *Brandy*, ipſius Johannis tunc in quodam cellar. ſcituat. in quodam loco vocat. *Brooks-Market* in Paroch. Sanctæ Andreæ Holborne in Com. præd. exiſten. Et aſſumpſiſſet ſuper ſe ſalvo & ſecure eoſdem deponere in quodam al. cellar. ſcituat. in quodam al. loco vocat. *Water-ſtreet* in Paroch. Sancti Clementis Dacorum in Com. præd. Idem Willielmus ſervientes & Agentes ſui poſtea ſcilt. eiſdem die & anno apud Paroch. Sancti Clementis Dacorum præd. Cados vini aduſti præd. tam negligent. & improvide tractaverunt in deponendo eos in cellar. ult. mentionat. quod pro defectu bonæ curæ præd. Willielmi ſervient. & agent. ſuorum unus eorundem cadorum vini aduſti adtunc & ibidem confract. fuit Et magna quantitas ſcilicet Centum & quinquagint. lagenæ vini aduſti in eodem cado ea occaſione in terram diffuſa & ſpoliat. fuit Cumque etiam præd. Willielmus poſtea ſcilicet eodem decimo die Novembris Anno decimo tertio ſupradicto apud Paroch. Sancti Clementis Dacorum præd. in Com. Middleſex præd. Aſſumpſiſſet ſalvo & ſecure elevare, Anglice *to take up*, diverſos al. Cados, Anglice *Casks*, vini aduſti, Anglice *Brandy*, ipſius Johannis tunc in quodam al. cellar. ſcituat. in quodam loco vocat. *Brooks-Market* in Paroch. Sancti Andreæ Holborne in Com. præd. exiſten' Et cados ill. ibidem carro imponere cuidam al. cellar. ſcituat. in quodam al. loco vocat. *Water-ſtreet* in Paroch. Sancti Clementis Dacorum in Com. præd. fore vect. & eoſdem cados ad cellar. ult. præd. ſcituat. in Water-ſtreet ult. præd. ſic ut præfertur vect. è carro præd. ſalvo & ſecure ibidem demittere & in cellar. ult. præd. deponere idem Willielmus ſervientes & agentes ſui poſtea ſcilicet eiſdem die & anno ſupradict. apud Paroch. Sancti Clement Dacorum præd. cados vini aduſti ult. præd. tam negligent. & improvide tractaverunt in deponendo eos in cellar. ult. mentionat. quod pro defectu bonæ curæ præd. Willielmi ſervient. & agent. ſuorum unus eorundem cadorum vini aduſti ult. mentionat. adtunc & ibidem confract. fuit Et magna quantitas ſcilicet Centum & quinquagint. lagenæ vini aduſti ult. præd. in eodem cado ult. mentionat. exiſten. ea occaſione adtunc & ibidem in terram diffuſa & ſpoliat. fuit Unde præd. Johannes dicit quod ipſe deteriorat. eſt Et dampnum habet ad valenciam Centum librarum Et inde producit ſectam &c.

Et modo ad hunc diem ſcilicet diem Sabbati prox. poſt Octab. Sancti Hillarii iſto eodem termino Uſque quem diem præd. Wil-

lielmus Barnard habuit licentiam ad billam præd. interloquend. & tunc ad reſpondend' &c. coram Domina Regina apud Weſtm. venit tam præd. Johannes Coggs per Attorn. ſuum præd. quam præd. Willielmus Barnard per Willielmum Collier Attorn. ſuum Et idem Willielmus Barnard defend. vim & injur. quando &c. Et dicit quod ipſe non eſt inde culpabilis Et de hoc pon. ſe ſuper patriam Et præd. Johannes Coggs ſimiliter &c. Ideo ven. inde jur. coram Domina Regina apud Weſtm. die lunæ prox. poſt craſtinum Purification. beatæ Mariæ Et qui nec &c. ad recogn' &c. quia tam &c. Idem dies dat. eſt partibus prædictis ibidem &c. Poſtea continuat. inde proceſſ. inter partes præd. de placito præd. per jur. poſit. inde inter eas in reſpectum coram Domina Regina apud Weſtm. uſque diem Jovis prox. poſt Octab. Purification. beatæ Mariæ extunc prox. ſequen. Niſi dilectus & fidel. Dominæ Reginæ Johannes Holt Mil. Capital. Juſtic. Dominæ Reginæ ad placita in Cur. ipſius Dominæ Reginæ coram ipſa Regina tenend. aſſign. prius die Mercur. prox. poſt Octab. Purification. beatæ Mariæ apud Weſtm. præd. in Com. Middleſex præd. in magna Aula placitorum ibidem per formam ſtatut' &c. ven. pro defectu jur' &c. Ad quem diem coram Domina Regina apud Weſtm. ven. præd. Johannes Coggs per Attorn. ſuum præd. Et præd. Capital. Juſtic. Dominæ Reginæ coram quo &c. miſit hic recordum ſuum coram eo habitum in hæc verba Poſtea die & loco infracontent. coram Johanne Holt Mil. Capital. Juſtic. infraſcript. aſſociat. ſibi Johanne Ince Gen. per formam ſtatut' &c. ven. tam infranominat. Johannes Coggs quam infranominat. Willielmus Barnard per Attorn. ſuos infracontent' Et jur. juratæ ill. exact. ſimiliter ven. qui ad veritatem de infracontent. dicend. electi triat. & jurat. dicunt ſuper ſacramentum ſuum quod præd. Willielmus Barnard eſt culpabil. de præmiſſis interius ſibi impoſit. modo & forma prout præd. Johannes Coggs interius inde verſus eum queritur Et aſſidunt dampna ipſius Johannis Coggs occaſione inde ultra miſ. & cuſtag. ſua per ipſum circa ſectam ſuam in hac parte appoſit. ad decem libr. & pro miſ. & cuſtag. ill. ad vigint. ſolid. Ideo conſideratum eſt quod præd. Johannes Coggs recuperet verſus præfat. Willielmum Barnard dampna præd. per jur. præd. in forma præd. aſſeſs. necnon viginti & un. libr. pro miſ. & cuſtag. ſuis præd. eidem Johanni Coggs per Cur. dictæ Dominæ Reginæ nunc hic ex aſſenſu ſuo de incremento adjudicat' Quæ quidem dampna in toto ſe attingunt ad trigint. & duas libras Et præd. Willielmus Barnard in Miſericordia &c.

Non cul'

Venire award-ed.

Poſtea returned.

Judgment *pro Quer'*.

Placita coram Domino Rege apud Weſtm. de termino Sanctæ Trinitatis Anno Regni Domini Willi. tertii nunc Regis Angliæ &c. nono.

Harriſon *verſus* Cage. Vide fo. 24.

Cantabr. ſſ. *Memorandum*, Quod als. ſcilicet termino Paſchæ Anno Regni Domini Gulielmi tertii nunc Regis Angl' &c. nono coram Domino Rege apud Weſtm. ven. Henricus Harriſon Gen. per Michaelem Johnſon Attorn. ſuum & protulit in Cur. dicti Domini Regis tunc ibidem quandam billam ſuam verſus Adlard. Cage Gen. & Elizabetham Ux. ejus in Cuſtod. Mar' &c. de placito tranſgr. ſuper caſum Et ſunt pleg. de proſequend. ſcilicet Johannes Doe & Richardus Roe Quæ quidem billa ſequitur in hæc verba ſſ. Cantabr. ſſ. Henricus Harriſon Gen. queritur de Adlard. Cage Gen. & Elizabetha Ux. ejus in Cuſtod. Mar. Mareſc. Domini Regis coram ipſo Rege exiſten. pro eo videlicet quod cum præd. Elizabetha dum ipſa ſola fuit ſcilicet primo die Aprilis Anno Regni Domini Willielmi tertii nunc Regis Angl' &c. octavo apud Borough green in Com. præd. (in conſideration. quod idem Henricus tunc & adhuc cœlebs & minime maritat. exiſten. ad ſpecial. inſtanc. & requiſition. ipſius Elizabethæ adtunc & ibidem agreaſſet cum eadem Elizabetha ac ſuper ſe aſſumpſiſſet & eidem Elizabethæ fideliter promiſiſſet quod ipſe idem Henricus duceret in uxorem ſuam eandem Elizabetham) ſuper ſe aſſumpſit & eidem Henrico adtunc & ibidem fidelit. promiſit quod ipſa dicta Elizabetha caperet in virum ſuum ipſum Henricum ac licet idem Henricus promiſſion. & aſſumption. præd. Elizabethæ præd. fidem adhiben. matrimon. cum aliqua alia Muliere contrahere penitus recuſavit & adhuc cœlebs & minime maritat. exiſtit ac ſemper a tempor. confectionem promiſſion. & aſſumption. præd. (dum eadem Elizabetha fuit ſola) parat. fuit & ſæpius obtulit eandem Elizabetham in uxorem ſuam legitime ducere videlicet apud Borough-green præd. in Com. præd. præd. tamen Elizabetha dum ipſa ſola fuit promiſſion. & aſſumption. ſuas præd. minime curan. ſed machinan. & fraudulent. intenden. ipſum Henricum in hac parte callide & ſubdole decipere & defraudare ipſum Henricum in virum ſuum non cepit (licet ad hoc faciend. præd. Elizabetha poſt promiſſion. & aſſumption. præd. fact. ſcilicet viceſimo nono die Aprilis Anno octavo

Caſe againſt Husband and Wife upon a Promiſe of Marriage by her whilſt ſole.

Breach

ſupradicto & ſæpius antea & poſtea apud Borough-green præd. in Com. præd. per eundem Henricum requiſit. fuiſſet ſed ipſum in virum ſuum capere omnino recuſavit ac poſtea ſcilicet primo die Octobris Anno octavo ſupradicto apud Borough-green præd. in Com. præd. cepit in virum ſuum præd. Adlardum contra promiſſion. & aſſumption. ejuſdem Elizabethæ præd. Cumq; etiam præd. Elizabetha dum ipſa ſola fuit ſcilicet primo die Maii Anno octavo ſupradicto indebitat. fuiſſet eidem Henrico in trecentis libr. legalis monet. Angl. pro denar. per ipſum Henricum ad ſpecial. inſtanc. & requiſition. ipſius Elizabethæ & pro eadem Elizabetha (dum ipſa ſola fuit) ante tempus illud ſolut. & erogat. ac pro denar. per ipſam Elizabetham dum ipſa ſola fuit de eodem Henrico ante tempus illud mutuat. & recept' Et ſic inde indebitat. exiſten. eadem Elizabetha dum ipſa ſola fuit eiſdem die & anno ult. mentionat. apud Borough-green præd. in Com. præd. in Conſ. inde ſuper ſe aſſumpſit & eidem Henrico adtunc & ibidem fidelit. promiſit quod ipſa dicta Elizabetha eaſdem trecen. libr. eidem Henrico bene & fideliter ſolvere & contentare vellet præd. tamen Elizabetha dum ipſa ſola fuit & præd. Adlard. & Elizabetha poſt deſponſal. inter eos celebrat. promiſſion. & aſſumption. ipſius Elizabethæ præd. ult. mentionat. in forma præd. fact. minime curan. ſed machinan. & fraudulent. intenden. ipſum Henricum in hac parte callide & ſubdole decipere & defraudare præd. trecen. libr. ſeu aliquam inde denar. eidem Henrico (licet ſæpius requiſit.) non ſolver. nec eorum alter ſolvit Sed ill. ei ſolvere ſeu pro eiſdem aliqualiter contentare omnino recuſaver. & adhuc recuſant Unde idem Henricus dicit quod ipſe deteriorat. eſt & dampnum habet ad valenc. trium mille librarum Et inde producit ſectam &c.

Requeſt and Refuſal.

And marrying the Defendant.

Indeb. Aſſumps. for Money laid out for and lent to her whilſt ſole.

Breach.

Et modo ad hunc diem ſcilt. diem Veneris prox. poſt craſtinum Sanctæ Trin. iſto eodem termino uſque quem diem præd. Adlard. & Elizabetha habuer. licenc. ad billam præd. interloquend. & tunc ad reſpondend' &c. coram Domino Rege apud Weſtm. ven. tam præd. Henricus per Attorn. ſuum prædict. quam præd. Adlard. & Elizabetha per Richardum Edwards Attorn. ſuum Et idem Adlard. & Elizabetha defend. vim & injur. quando &c. & dicunt quod præd. Elizabetha non aſſumpſit ſuper ſe modo & forma prout præd. Henricus ſuperius verſus eos queritur Et de hoc pon. ſe ſuper patriam & præd. Henricus ſimiliter &c. Ideo ven. inde Jur. coram Domino Rege apud Weſtm. die Mercur. prox. poſt tres ſeptiman. Sanctæ Trin' Et qui nec &c. ad recogn' &c. quia tam &c. idem dies dat. eſt partibus præd. ibidem &c. Poſtea continuat. inde proceſſ. inter partes præd. de placito præd. per jurat. poſit. inde inter eas in reſpect. coram Domino Rege apud Weſtm. uſq; diem Lunæ prox. poſt tres ſeptiman. Sancti Michaelis ex tunc prox. ſequen. Niſi juſtic. Domini Regis ad Aſſiſas in Com. præd. capiend. aſſign. prius die Jovis undecimo die Auguſti apud Caſtrum Cantabr.

Non Aſſumpſit pleaded.

tabr. in Com. præd. per formam ſtatut' &c. ven. pro defectu Jur' &c. Ad quem diem coram Domino Rege apud Weſtmonaſterium ven. præd. Henricus per Attorn. ſuum præd. & præfat. Juſtic. coram quibus &c. miſer. hic record. ſuum coram eis habitum in hæc verba ſſ. Poſtea die & loco infracontent. coram Edvardo Ward Mil. Capital. Baron. Scaccarii Domini Regis & Thoma Knight Ar. hac vice aſſociat. eidem Edvardo Ward & Thomæ Rokeby Mil. un. juſtic. dicti Domini Regis ad placita coram ipſo Rege tenend. aſſign. juſtic. ipſius Domini Regis ad Aſſiſas in Com. Cantabr. capiend. aſſign. per formam ſtatut' &c. præſentia præfat. Thomæ Rokeby non expectat. virtute brevis dicti Domini Regis de ſi non omnes ven. infranominat. Henricus Harriſon per Attorn. ſuum infracontent. & infraſcript. Adlard. Cage & Elizabetha Uxor ejus licet ſolempniter exact. non ven. ſed defalt. fecer. Ideo jurat. unde infra fit mentio capiatur verſus eos per defalt. ſuper quo jur. juratæ ill. exact. ſimiliter ven. qui ad veritat. de infracontent. dicend. elect. triat. & jurat. dicunt ſuper ſacramentum ſuum quod præd. Elizabetha aſſumpſit ſuper ſe modo & forma prout præd. Henricus interius verſus præd. Adlard. & Elizabetham queritur & aſſidunt dampna ipſius Henrici occaſione non performation. promiſſion. & aſſumption. infraſpecificat. ultra miſ. & cuſtag. ſua per ipſum circa ſectam ſuam in hac parte appoſit. ad quadringent. libr. Et pro miſ. & cuſtag. ill. ad quadragint. ſolid. —— Ideo conſiderat. eſt quod præd. Henricus Harriſon recuperet verſus præfat. Adlard. Cage & Elizabetham Ux. ejus dampna ſua præd. per jur. præd. in forma præd. aſſeſs. necnon ſexdecim libr. pro miſis & cuſtagiis ſuis præd. eidem Henrico per Cur. dicti Domini Regis nunc hic ex aſſenſu ſuo de incremento adjudicat. quæ quidem dampn. in tot. ſe attingunt ad quadringent. & octodecim libr' Et præd. Adlard. & Elizabetha in Miſericordia &c. Poſtea ſcilicet die Sabbati viceſimo ſexto die Novembris Anno Regni Domini Willielmi tertii nunc Regis Angl' &c. decimo tranſcript. record. & proceſſ. præd. inter partes præd. de placito præd. cum omnibus ea tangen. prætextu cujuſdam brevis dicti Domini Regis de error. corrigend. per præfat. Adlard. & Elizabetham in præmiſſis proſecut. coram juſtic. dicti Domini Regis de Communi Banco & Baron. de Scaccario dicti Domini Regis de gradu de le Coyfe in Camera Scaccarii præd. juxta formam ſtatut. in Parliament. Dominæ Elizabethæ nuper Reginæ Angl' &c. apud Weſtm, viceſimo tertio die Novembris Anno Regni ſui viceſimo ſeptimo tent. edit. a præd. Cur. dicti Domini Regis hic coram ipſo Rege tranſmiſſ. fuer. præd. que Adlard & Elizabetha in eadem Cur. Cameræ Scaccarii comparentes quaſdem materias pro error. in record. & proceſſ. præd. pro revocatione & adnullation. judic. præd. habend. aſſign. ad quas præd. Henricus in eadem Cur. Cameræ Scaccarii præd. ſimiliter comparens placitavit quod nec in record. & proceſſ. præd. nec in redditione judic. præd. in ullo fuit errat. Poſtmodumque

Poſſes returned.

Defendant's Default.

Verdict *pro Quer'.*

Judgment.

Writ of Error in the Exchequer-Chamber.

Error aſſign'd.

ſcilt. die Martis viceſimo ſeptimo die Junii Anno Regni Domini Willielmi tertii nunc Regis Angl' &c. undecimo viſ. & per Cur. Cameræ Scaccarii præd. diligent. examinat. & plenius intellectis tam Record. & proceſſ. præd. ac judic. ſuper eiſdem reddit. quam præd. cauſis pro error. per præfat. Adlard. & Elizabetham aſſign. & allegat. videbatur eidem Cur. Cameræ Scaccarii præd. quod record. ill. in nullo vitioſum aut defectivum exiſtit Ac quod record. ill. in nullo fuit errat. Ideo adtunc & ibidem per eandem Cur. Cameræ Scaccarii prædict. conſ. fuit quod judicium prædict. in omnibus affirmaretur & in omni ſuo robore ſtaret & effectu dictis cauſis & materiis pro erroribus per præfat. Adlard. & Elizabetham aſſign. & allegat. in aliquo non obſtantibus Et ulterius adtunc & ibidem per eandem Cur. conſ. fuit quod præd. Henricus recuperet verſus præfat. Adlard. & Elizabetham decem libr. & decem ſolid. eidem Henrico ex aſſenſu ſuo per Cur. ibidem juxta form. ſtatut. inde edit. & proviſ. adjudicat. pro dampnis miſ. & cuſtag. ſuis quæ habuit occaſione dilation. execution. judic. præd. prætextu proſecution. dicti brevis de error' Ac ſuperinde record. prædict. necnon proceſſ. præd. Juſtic. de Communi Banco præd. & Baron. præd. Scaccarii præd. coram eis in præmiſſis habit. coram Domino Rege ubicunq; &c. per eoſdem Juſtic. & Baron. præd. adtunc remittebantur ſecundum formam ſtatut' &c. Et in Cur. dicti Domini Regis hic coram ipſo Rege jam reſident &c. Poſtea ſcilt. die Mercur. prox. poſt tres ſeptimanas Sanctæ Trin. Anno Regni Domini Willielmi tertii nunc Regis Angl' &c. decimo tertio coram dicto Domino Rege apud Weſtm. ven. prædictus Henricus Harriſon per Attorn. ſuum præd' Et cogn' ſe eſſe ſatisfact. per præd. Adlard. & Elizabetham de debito dampn. miſ. & cuſtag. præd' Ideo iidem Adlard & Elizabetha de debito dampn. miſ. & cuſtag. ill. ſint inde quiet' &c.

Judgment affirmed.

Coſts adjudged *occaſione dilationis execution.* and Remittance of the Record.

Satisfaction acknowledged.

Placita coram Domina Regina apud Weſtm. de Termino Sancti Michaelis Anno Regni Dominæ Annæ nunc Reginæ Angliæ &c. Primo. Rotulo 223.

Juſtin *verſus* Ballin. Vide fo. 34.

Angl', ſſ. *Memorandum*, Quod die Veneris prox. poſt tres ſeptimanas Sancti Michaelis iſto eodem termino coram Domina Regina apud Weſtm. ven. Nicholaus Juſtin in propria perſona ſua

Suggeſtion ſetting forth Statute of 13 *Ric.* 2. whereby the Admiralty have no Cognizance of any Thing done upon the Land.

Et dat Cur. dictæ Dominæ Reginæ nunc hic intelligi & informari quod cum in Statuto in Parliamento Domini Richardi nuper Regis Angl. poſt conqueſtum ſecundi Anno Regni ſui decimo tertio apud Weſtm. in Com. Middleſex tent. inter al. ordinat. & inactitat. exiſtit authoritate ejuſdem Parliamenti quod Admiralli & eorum deputat. extunc deinceps de aliqua re facta infra Regnum Angl. niſi ſolummodo de re ſuper Mare fact. prout tempore Domini Edvardi nuper Regis Angl' Avi ejuſdem Domini Regis Richardi ſecundi debite uſitat. fuer. nullatenus intromitterent prout

Alſo another Stat. 15 *R.* 2. to the ſame Purpoſe.

in eodem ſtatuto inter al. plenius continetur Cumque etiam per aliud ſtatut. in Parliament. præd. nuper Regis Richardi ſecundi Anno Regni ſui decimo quinto tent. apud Weſtm. præd. in præd. Com. Middleſex edit. inter al. declarat. ordinat. & ſtabilit. exiſtit quod de omnibus contractibus placitis & querelis ac de omnibus al. rebus fact. ſive emergen. infra corpora Com. tam per terram quam per aquam acetiam de Wrecca Maris Cur. Admiralitatis nullam haberet cognitionem poteſtatem nec juriſdiction. ſed quod omnia hujuſmodi contract. placit. & querel. ac omnia al. emergen. infra corpora Com. tam per terram quam per aquam ut præfertur acetiam Wrecca Maris terminat. triat. diſcuſſ. & remediat. forent per legem terræ & non coram Admirallo vel Admirallis nec per ejus locumtenen. quoviſmodo prout in eodem ſtatut.

Another Stat. 2 *H* 4. confirming the former.

etiam inter al. plenius continetur Cumque etiam in Parliamento Domini Henrici nuper Regis Angl. poſt conqueſtum quarto Anno Regni ſui ſecundo tent. apud Weſtm. in Com. præd. edit. inter al. ordinat. & inactitat. exiſtit quod prædictum ſtatutum de prædicto Anno dicti nuper Regis Richardi ſecundi teneretur & cuſtodiretur ac debitæ execution. demandaretur prout in eodem ſtatut. inter al. continetur Cumque etiam omnia & ſingula placita & negotia tangen. ſive concernen. validitat. explication. interpretation.

conſtruction. ſive expoſition. aliquorum ſtatut. in quibuſcunque Parliament. dictæ Dominæ Reginæ nunc vel progenitorum ſuorum nuper Regum ſive Reginarum Angl. edit. fact. & proviſ. ac omnia & ſingula placita & cognitiones placitorum pro aliquibus tranſgr. contract. tranſgr. ſuper caſum pro captione detentione ſive converſione aliquorum bonorum ſive catallorum vel pro aliqua al. cauſa quacunque tam ſuper terram quam ſuper aquam infra Corpus alicujus Com. infra hoc Regnum Angl. vel alibi ſuper terram aliquibus perſone ſive perſonis contingen. ſurgen. emergen. fact. ſive illat. ad Dominam Reginam nunc & coronam ſuam Regiam ſpecialiter ſpectant & pertinent & per leges & ſtatut. hujus Regni Angl. in Cur. Reginæ de recordo temporalibus coram Domina Regina nunc hic vel coram juſticiar. ſive judicibus ſuis temporalibus & non coram Domino Admirallo Angl. nec per Admirallum Angl. vel ejus locumtenen. vel deputat. quoviſmodo triari terminari & diſcuti debeant & temporibus retroact. ſemper hactenus conſueverunt Quidam tamen Johannes Ballam & Gulielmus Hart præmiſſorum non ignari ſed machinan. ipſum Nicholaum Juſten contra debit. legis hujus Regni Angl. curſum ac contra formam ſeparal. ſtatut. præd. indebite prægravare opprimere & defatigare ac cognition. placiti quæ ad dictam Dominam Reginam nunc & coronam ſuam Regiam ſpecialiter ſpectat & pertinet ad aliud examen. in Cur. Admiralitatis coram præhonorando viro Domino Carolo Hedges Milite & legum Doctore ſupremo Cur. Admiralitat. Angl. judic. ſive locumtenen. ſive ſurrogat. ſuo aut aliquo al. judice in hac parte competen. virtute cujuſdam proceſſus è dicta Cur. Admiralitat. ad proſecution. Navis vocat. *The Swan of Norway* cujus Berent Gertſon nuper fuit ſed Johannis Orce als. Ord alias Larwick ejus Magiſter ejuſque apparatus & acceſſiones & præd. Nicholai Juſten proprietar. dictæ Navis emanen. de & concernen. diverſis mercimon. & merchandiz. operibus & laboribus per præfat. Johannem Ballam & Gulielmum Hart pro Nave præd. vendit. deliberat. fact. invent. & proviſ. extra juriſdiction. Cur. illius minus juſte traxit in placitum caute & ſubdole libellando & ſuggerendo verſus Navem præd. & præd. Nicholaum Juſten in eadem Cur. Admiralitat. inter alia ut ſequitur videlicet: Imprimis, *That in the Month of* November, *in the Year of our Lord One thouſand ſeven hundred, and for ſeveral Months before and after the ſaid* Brent Gertſon *of* Norway *was the Maſter and Commander of the ſaid Ship the* Swan, *and had the Care and Government of her as Maſter, and was put in and appointed Maſter of her by her Owner, who was then an Inhabitant of* Norway *and a Subject of the King of* Denmark, *but is ſince dead, and ſo much the ſaid* Brent Gertſon *hath confeſſed and declared, and this was and is true publique and notorious*, & ponit conjunctim diviſim & de quolibet Item, *That in the ſaid Month of* November *in the Year of our Lord One thouſand ſeven hundred, the ſaid Ship the Swan being upon the high and open Seas near the*

That the Expoſition of the Statutes belongs to the Temporal Courts.

Breach.

By Proceſs out of the Admiralty for Goods and Labour.

Libel ſet forth.

the Port of London, *within the Juriſdiction of the High Court of the Admiralty of* England, *and then ſtanding in great need of a new Cable, a Coil of ſmall Ratlin, a new Anchor and the other Things mentioned in the two Schedules hereunto annexed; the ſaid* John Ballam *and* William Hart *did thereupon at the ſpecial Inſtance and Requeſt of the ſaid* Berent Gertſon, *then Maſter and Commander of the ſaid Ship upon the high and open Seas, and within the Juriſdiction aforeſaid, furniſh and ſupply the ſaid Ship with the Cable, Anchor, and other Things mentioned in the ſaid two Schedules, at the reſpective Rates ſchedulate, to wit, the ſaid* John Ballam *furniſhed and ſupplied her with the Cable, ſmall Ratlin, and the other Things mentioned in the firſt of the ſaid Schedules,* N° 1, *and at the Rates there ſet down amounting in all to the Sum of One hundred and four Pounds fifteen Shillings Sterling, and the ſaid* William Hart *furniſhed and ſupplied her with the Anchor and the other Things mentioned in the ſaid other Schedule* N° 2, *and at the Rates there ſet down, amounting in the whole to the Sum of nineteen Pounds eleven Shillings and Six-pence Sterling, and the ſaid Cable, Anchor, and other Things mentioned in the ſaid two Schedules, were at the Time and Place aforeſaid ſent and delivered by the ſaid* John Ballam *and* William Hart, *or their Order, on board the ſaid Ship, and have ever ſince and now are belonging to her and applied to her Uſe, and the ſame were at the Time of their being ſent and delivered on board the ſaid Ship, really and truly worth the reſpective Rates and Sums of Money ſchedulate, and the like ſort of Goods were then uſually ſold at the ſame Rates, and this was and is true, publick and notorious, and ſo much the ſaid* Berent Gertſon *hath confeſſed and declared to ſeveral Perſons* ponit tamen de aliis bonis ſummis tempore & loco &c. & ut ſupra: Item, *That the ſaid Ship the* Swan, *ſhortly after the ſaid Cable, Anchor, and the other Things mentioned in the ſaid two Shedules, was ſent and delivered on board her as aforeſaid, proceeded to* Norway, *and did then and ever, and now doth belong to that place, and the ſaid* Berent Gertſon *her late Maſter did, and do all reſide in* Norway, *and were and are Subjects to the King of* Denmark, *and this was and is true, publick and notorious, and ſo much the ſaid* John Orce alias Ord als. Larwick *hath lately confeſſed and declared to ſeveral Perſons* & ponit ut ſupra. Item, *That the ſaid ſeveral Sums of Money mentioned in the ſaid two Schedules, in all amounting in the whole to the Sum of One hundred twenty-four Pounds ſix Shillings and Six-pence Sterling, and are really and truly due to the ſaid* John Ballam *and* William Hart, *for the ſaid Cable, Anchor, and the other Things ſchedulate, and the ſaid* John Orce alias Crd alias Larwick, *the preſent Maſter of the ſaid Ship hath lately confeſſed and declared to ſeveral Perſons that the aforeſaid Sums of Money are yet unpaid, and that it is ſo ſet down in Inſtructions given him by the ſaid* Nicholas Juſten *the Owner of the ſaid Ship, or to that effect,* ut ſupra: Item, *That the ſaid* John Ballam *and* William Hart *have ſeveral Times demanded the Sums of Mo-*

ney due to them as aforeſaid, of the preſent Maſter of the ſaid Ship, perſonally, and of her ſaid Owner by Letters, but they refuſing or delaying to pay for the ſame, and the ſaid John Ballam *and* William Hart *having no Remedy for the Recovery thereof but by arreſting the ſaid Ship in the High Court of the Admiralty of* England, *have cauſed the ſame to be arreſted by Virtue of a Warrant from the ſaid Court, and all Perſons having or pretending to have any Right, Title, or Intereſt therein, to be duly cited to appear in the ſaid Court to anſwer to them the ſaid* John Ballam *and* William Hart, *in a Cauſe or Cauſes civil and maritime, and the ſaid* Nicholas Juſten *hath there appeared by his Proctor and ſubmitted himſelf to the Juriſdiction of the ſaid Court, and as Owner of the ſaid Ship given Bail to anſwer the Action brought by the ſaid* John Ballam *and* William Hart *againſt the ſaid Ship, and to abide by the Judgment of the ſaid Court, and to pay what ſhall be adjudged, together with Expences of Suit, and thereupon procured the ſaid Ship to be releaſed from the ſaid Arreſt, as by the Proceedings of the ſaid Court, to which the Party proponent refers himſelf, doth appear.*

N° 1, Delivered for the Uſe of the Ship *Swan of Longſound*, Mr. *Berent Gertſon* Commander, *November* the 16th, 1700. *per John Ballam.*

C.	q.	lb.		l.	s.	d.
59	1	10	*A Cable of* 15, *in full* 120 *Fathom.*			
00	1	03	*A Coil of ſmall Ratlin.*			
59	2	13	*at* 35 s. per *Hundred is*	104	6	8
			One Hand-line, 4 Skains of Marlin and Houſen.	00	3	4
			Lighteridge on Board.	00	5	0
				104	15	0

N° 2, Smith's Work to the Ship *Swan*, *Berent Gertſon* Maſter, *November* the 25th, 1700. *per William Hart.*

	l.	s.	d.
For one new Anchor weighing 13 C. 24 l. per *Contract.*	19	00	4
For One hundred Five-Inch Nails.	00	4	2
For One hundred Four-Inch Nails.	00	2	6
For Two hundred of Nails.	00	3	0
For mending one Pump-Iron.	00	1	6
	19	11	6

Item quod præmiſſa omnia & ſingula fuerunt & ſunt vera & notoria prout per veram copiam libelli præd. in Cur. dictæ Dominæ Reginæ coram ipſa Regina nunc hic habit. lect. & audit. inter alia plenius liquet & apparet ubi revera mercimon. & merchandiz.

Averment, that the Goods and Work were for the Ship in the River of *Thames*.

opera & labores præd. invent. proviſ. fact. vendit. & deliberat. fuer. pro Nave præd. in Rivo Thameſis videlicet in Paroch. Sancti Pauli Shadwell in Com. Middleſex & non ſuper altum Mare nec infra juriſdiction. Cur. Admiralitat. præd. prout per libellum præd. ſuperius ſupponitur ad quæ omnia & ſingula iidem Johannes Ballam & Gulielmus Hart ipſum Nicholaum Juſten in præd. Cur. Admiral. coram præfat. judice ejuſdem Cur. ſuper præmiſſis comparere & eiſdem Johanni Ballam & Gulielmo Hart de & ſuper eiſdem reſpondere minus juſte aſtrinxit ac licet idem Nicholaus Juſten omnia & ſingula præmiſſa per ipſum ſuperius ſuggeſt. & allegat. in præd. Cur. Admiralitat. coram præfat. judice Cur. illius pro exoneration. & diſcuſſione ſua abinde in hac parte ſuperius placitavit & allegavit & ill. inevitabili teſtimonio & veritat. probare obtulit Idem tamen Judex Cur. illius placitum allegation. & probation. ill. admittere penitus recuſavit & adhuc recuſat Et præd. Johannes Ballam & Gulielmus Hart de & ſuper præmiſſ. præd. ipſum Nicholaum Juſten ad reſpondend. compellere & per ſententiam & final. decret. Cur. Admiral. præd. in præmiſſ. condempnari totis ſuis viribus conatur & indies machinat. in dictæ Dominæ Reginæ nunc contemptum coronæ & dignitat. ſuarum exhæredation. & ipſius dampnum depauperation. & gravamen manifeſtum ac contra legem & conſuetudinem Regni dictæ Dominæ Reginæ nunc Angliæ necnon contra formam & effectum ſeparal. ſtatut. præd. in hujuſmodi caſu in forma præd. edit. & proviſ. Et hoc idem Nicholaus Juſten parat. eſt verificare Unde idem Nicholaus auxilium & munificentiam Cur. dictæ Dominæ Reginæ coram ipſa Regina nunc humillime implorando pet. ſibi remedium & breve dictæ Dominæ Reginæ hic prohibition. præfat. judici Cur. Admiral. præd. vel alicui al. judici in hac parte competen. cuicunque dirigend. ad prohibend. ipſum vel ipſos ne placitum præmiſſa præd. quoviſmodo concernen. ſeu tangen. coram ipſo vel ipſis teneat &c. Et ei conceditur &c.

Plea in Admiralty.

Placita coram Domino Rege apud Weſtm. de termino Paſchæ Anno Regni Domini Willielmi tertii nunc Regis Angliæ &c. duodecimo. Rotulo 108.

Hilliard *verſus* Cox. Vide fo. 37.

Berks, ff. MEmorandum, Quod als. ſcilt. termino Sancti Michaelis ultimo præterito coram Domino Rege apud Weſtm. ven. Daniel Hillyard Clericus Adminiſtrator omnium & ſingulorum bonorum & catallorum jurum & creditorum quæ fuer. Johannis Cox defunct. tempore mortis ſuæ qui obiit inteſtat. per Edvardum Chapman Attorn. ſuum Et protulit in Cur. dicti Domini Regis tunc ibidem quandam billam ſuam verſus Thomam Cox in Cuſtod. Mar' &c. de placito tranſgr. ſuper caſum Et ſunt pleg. de proſequend. ſcilicet Johannes Doe & Richardus Roe Quæ quidem billa ſequitur in hæc verba ſcilicet Berks ff. Daniel Hillyard Clericus Adminiſtrator omnium & ſingulorum bonorum & catallorum jurum & creditorum quæ fuer. Johannis Cox defunct. tempore mortis ſuæ qui obiit inteſtat. queritur de Thoma Cox in Cuſtod. Mar. Mareſc. Domini Regis coram ipſo Rege exiſten. pro eo videlt. quod cum præd. Thomas primo die Martii Anno Regni Domini Willielmi tertii nunc Regis Angliæ &c. undecimo apud Farringdon in Com. præd. indebitat. fuiſſet præfat. Johanni in vita ſua in Centum ſolid. legalis monetæ Angl. pro diverſis bon. mercimon. & merchandiz. ipſius Johannis per præfat. Johannem in vita ſua eidem Thomæ ad ſpecial. inſtanc. & requiſition. ipſius Thomæ ante tempus illud vendit' & deliberat' Et ſic inde indebitat. exiſten. præd. Thomas in conſideration. inde poſtea ſcilicet eiſdem die anno & loco ſupradict. ſuper ſe aſſumpſit & eidem Johanni in vita ſua adtunc & ibidem fidelit. promiſit quod ipſe præd. Thomas præd. Centum ſolid. præfat. Johanni cum inde poſtea requiſit. eſſet bene & fidelit. ſolvere & contentare vellet Cumque etiam poſtea ſcilicet ſecundo die Martii Anno undecimo ſupradicto apud Farringdon præd. in conſ. quod præd. Johannes in vita ſua ad ſimiles inſtanc. & requiſition. ipſius Thomæ vendidiſſet & deliberaſſet eidem Thomæ diverſa al. bon. mercimon. & merchandiz. ipſius Johannis præd. Thomas ſuper ſe aſſumpſ. & eidem Johanni adtunc & ibidem fideliter promiſit quod ipſe præd. Thomas tant. denar. ſum-

Indeb. Aſſumpſ. by an Adminiſtrator for Goods ſold and delivered by the Inteſtate.

Quantum meruit.

ſummas pro bon. mercimon. & merchandiz. præd. ult. mentionat. quant. bon. mercimon. & merchandiz. ill. tempore vendition. & deliberation. eorundem rationabilit. valebant eidem Johanni cum inde poſtea requiſit. eſſet bene & fidelit. ſolvere & contentare vellet Et idem Daniel in facto dicit quod bon. mercimon. & merchandiz. præd. ult. mentionat. tempore vendition. & deliberation. eorundem rationabiliter valebant al. Centum ſolid. ſimilis legalis monet. Angl. videlicet apud Farringdon præd. Et inde idem Thomas adtunc & ibidem notitiam habuit præd. tamen Thomas ſeparal. promiſſion. & aſſumption. ſuas præd. in forma præd. fact. minime curans ſed machinans & fraudulent. intendens eundem Johannem in vita ſua & præfat. Daniel. poſt ipſius Johannis mortem in hac parte callide & ſubdole decipere & defraudare præd. ſeparal. denar. ſum. præfat. Johanni in vita ſua ſeu præfat. Daniel. poſt ipſius Johannis mortem (cui quidem Daniel. adminiſtratio omnium & ſingulorum bonorum & catallorum jurum & creditorum quæ fuer. præfat. Johannis tempore mortis ſuæ per Joſephum Woodward legum Doctor. ac Domini Archini. Archinat. Berks officialis legitime conſtitut. poſt mortem ejuſdem Johannis ſcilicet decimo die Aprilis Anno Domini Milleſimo ſexcenteſimo nonageſimo nono apud Farringdon præd. debito modo commiſſa fuit cui quidem official. commiſſio Adminiſtration. præd. in hac parte de jure pertinuit) nondum ſolvit nec eis ſeu eorum alteri pro eiſdem aliqualit. contentavit licet ad hoc faciend. præd. Thomas poſt mortem ipſius Johannis & poſt Adminiſtration. præd. in forma præd. commiſſ. ſcilicet viceſimo die Aprilis Anno undecimo ſupradicto apud Farringdon præd. per præfat. Danielem requiſit. fuit ſed ill. præfat. Johanni in vita ſua & præfat. Danieli poſt ipſius Johannis mortem ſolvere aut aliqualit. pro eiſdem contentare omnino recuſavit & præfat. Danieli adhuc recuſat Unde idem Daniel dicit quod ipſe deteriorat. eſt & dampnum habet ad valenc. decem libr' Et inde producit ſectam &c. Et profert hic in Cur. idem Daniel literas Adminiſtrator. præd. Joſephi Woodward quæ commiſſion. Adminiſtration. prædict. in forma præd. teſtantur quarum dat. eſt die & anno ſupradict' &c.

Breach.

Letters of Adminiſtration committed.

Requeſt.

Profert of the Letters of Adminiſtration.

Et modo ad hunc diem ſcilicet diem Mercur. prox. poſt quinden. Paſchæ iſto eodem termino uſque quem diem præd. Thomas Cox habuit licenc. ad billam præd. interloquend. & tunc ad reſpondend' &c. coram Domino Rege apud Weſtm. ven. tam præd. Daniel Hillyard per Attorn. ſuum præd. quam præd. Thomas Cox per Edvardum Serle Attorn. ſuum Et idem Thomas defend. vim & injur. quando &c. Et petit. audit præd. literarum Adminiſtration. præd. modo hic in Cur. prolat. & in narration. præd. ſuperius ſpecificat. & ei legitur in hæc verba ſſ. Joſephus Woodward legum Doctor ac Domini Archini. Archinat. Berks official. legitime conſtitut. dilecto nobis in Chriſto Daniel. Hillyard Clerico principal. creditor. Johannis Cox dum vixit de Newbery infra Com. &

Pet. Oyer of the Letters of Adminiſtration.

Archinatum Berks præd. Grocer nuper defunct. ſalutem in Domino Cum dict. Johannes Cox ſic ut præmittit. defunct. nuper ab inteſtato deceſſerit nos igitur affectan. ut bona jura & credita ejuſdem defunct. bene & fideliter adminiſtrantur & in pios uſus convertantur & diſponantur ad adminiſtrand. igitur bona jura & credita præd. dict. defunct. ad bene & fideliter diſponend. de eiſdem necnon credita quæcunq; dict. defunct. petend. colligend. levand. & exigend. & quæ dict. defunct. dum vixit. & mortis ſuæ tempore pertinuerunt ac de ſolvend. ei alienum in quo dict. defunct. hujuſmodi mortis ſuæ tempore extit. obligat. quatenus bona jura & credita hujuſmodi ad hoc extendunt juxta ratam eorundem tibi de cujus fidelitat. in hac parte confidimus permittitur de bene & fideliter adminiſtrando eadem ac de pleno & fidel. inventario omnium & ſingulorum bonorum jurum & creditorum dict. defunct. conficiend. illudque in Regrum. Domini Archini Berks præd. citra vel ante primum diem menſis Junii prox. futur. exhibend. necnon de pleno & vero Compoto calcul. ſive racocinio de ac ſuper additione tua citra vel ante primum diem Martii qui erit in Anno Domini Milleſimo ſexcenteſimo nonageſimo nono inde reddend. ad Sancta Dei Evangelia in debita juris forma rite jurat. plenam tenore præſentium committimus poteſtatem Teque Adminiſtrator. omnium & ſingulorum bonorum jurium & creditorum dict. defunct. ordinamus deputamus & conſtituimus per præſentes Anna Cox vidua relicta ejuſdem defunct. literis Adminiſtrator. bonor. &c. in ſcriptis prius renuncian. Dat. apud Oxon. ſub ſigillo officii noſtri præd. decimo die Aprilis Anno Domini Milleſimo ſexcenteſimo nonageſimo nono Quibus lectis & auditis idem Thomas dicit quod præd. Daniel actionem ſuam præd. inde verſus eum habere ſeu manutenere non debet quia dicit quod præd. Thomas tempore mortis præd. Johannis Cox & tempore Commiſſion. Adminiſtration. præd. & diu ante fuit inhabitans & commorans in civitat. Oxon in Com. Oxon. quæ quidem civitas eſt & ſemper fuit infra Dioceſin de Oxon. & extra Archidinat. Berks præd. & juriſdiction. Archini Archidinat. ill. qui quidem Archidinat. præd. & tot. Com. Berks præd. ſunt & ſemper fuerunt infra Dioceſin de Sarum & non infra Dioceſin de Oxon. per quod commiſſio Adminiſtration. omnium & ſingulorum bonorum & catallorum jur. & creditorum quæ fuer. præfat. Johannis Cox tempore mortis ſuæ ad Thomam providentia Divina adtunc & adhuc Cantuar. Archiepiſcopum ratione prærogativæ ſuæ & non ad præd. Archidiacum Archinat. Berks vel aliquem alium inferiorem judicem de jure pertinuit ac præd. literæ Adminiſtration. hic in Cur. prolat. ſunt vacuæ & nullius valoris in lege & hoc parat. eſt verificare unde pet. judic. ſi præd. Daniel actionem ſuam præd. inde verſus eum habere ſeu manutenere debeat &c.

Pleads that the Inteſtate at the Time of his Death lived in another Dioceſe.

Et præd. Daniel Hillyard dicit quod ipſe per aliqua per præd. Thomam Cox ſuperius placitando allegat. ab actione ſua præd. inde

Demurrer with ſpecial Cauſes.

inde verſus ipſum Thomam habend. præcludi non debet quia dicit quod placitum præd. per ipſum Thomam modo & forma præd. ſuperius placitat. materiaq; in eodem content. minus ſufficien. in lege exiſtit ad ipſum Daniel. ab actione ſua præd. inde verſus ipſum Thomam habend. præcludend. Ad quod quidem placitum modo & forma præd. ſuperius placitat. ipſe idem Daniel neceſſe non habet nec per legem terræ tenetur aliquo modo reſpondere Et hoc parat. eſt verificare unde pro defectu ſufficientis placiti in hac parte idem Daniel petit judicium & dampna ſua occaſione præmiſſorum ſibi adjudicari &c. Et pro cauſis morationis in lege ſecundum formam ſtatut. in hujuſmodi caſu edit. & proviſ. idem Daniel oſtendit & Curiæ hic demonſtrat has cauſas ſubſequen. videlicet eo quod non apparet per placitum præd. quod præd. Thomas Cox non fuit commorans infra Dioceſin Epiſcopi Sarum tempore mortis prædicti Johannis Cox quodque placitum illud incertum eſt & caret forma &c.

Joinder. Et præd. Thomas Cox dicit quod placitum præd. per ipſum Thomam modo & forma præd. ſuperius placitat. materiaq; in eodem content. bon. & ſufficien. in lege exiſt. ad ipſum Daniel. ab action. ſua præd. inde verſus ipſum Thomam habend. præcludend. quod quidem placitum materiamque in eodem content. idem Thomas parat. eſt verificare & probare prout Cur' &c. Et quia præd. Daniel ad placitum illud non reſpondit nec ill. hucuſq; aliqualit. dedic. idem Thomas ut prius pet. judic. & quod præd. Daniel ab actione ſua præd. inde verſus ipſum Thomam habend. præcludatur &c. Sed quia Cur. dicti Domini Regis nunc hic de judicio ſuo de & ſuper præmiſſ. reddend. nondum adviſatur dies inde dat. eſt partibus præd. coram Domino Rege apud Weſtm. uſq; diem prox. poſt de judicio ſuo inde audiend. eo quod curia dicti Domini Regis nunc hic inde nondum &c.

Placita coram Domino Rege apud Weſtm. de termino Sanctæ Trinitatis Anno Regni Domini Willi. tertii nunc Regis Angliæ &c. duodecimo. Rotulo 369.

Gidley *verſus* Williams. Vide fo. 37.

Cornub' ff. *Memorandum*, Quod als. ſcilicet termino Paſchæ ult. præterito coram Dom. Reg. apud Weſtm. ven. Thomaſina Gidley vidua Adminiſtratrix omnium bonorum & catallorum Richardi viri ſui nuper defunct. per Petrum Champion Attorn. ſuum & protulit in Cur. dicti Domini Regis tunc ibidem quandam billam ſuam verſus Pethericum Williams als. dict. Petherick Booth *of the Pariſh of* Withiel *in the County of* Cornwal *Yeoman*, in Cuſtod. Mar' &c. de placito debiti Et ſunt pleg. de proſequend. ſcilicet Johannes Doe & Richardus Roe Quæ quidem billa ſequitur in hæc verba ff. Cornub. ff. Thomaſina Gidley vidua & Adminiſtratrix omnium bonorum & catallorum Richardi Gidley viri ſui nuper defunct. queritur de Petherico Williams als. dict. Petherick Booth *of the Pariſh of* Withiel *in the County of* Cornwal *Yeoman*, in Cuſtod. Mar. Mareſc. Domini Regis coram ipſo Rege exiſten. de placito quod reddat ei viginti libras legalis monetæ Angl. quas ei DEBET ET injuſte detinet pro eo videlt. quod cum præd. Pethericus decimo die Junii Anno Milleſimo ſexcenteſimo octogeſimo quinto apud Saint Collombe Major. in Com. præd. per quandam billam ſuam obligator. ſigillo ipſius Petherici ſigillat. Cur. que dicti Domini Regis nunc hic oſtenſ. cujus dat. eſt eiſdem die & anno cognovit ſe debere & indebitari eidem Richardo Gidley in vita ſua in integra ſumma decem libr. bonæ & legalis monetæ Angliæ ſolvend. eidem Richardo in vita ſua Executoribus & Adminiſtratoribus ſive aſſign. ſuis apud vel ſuper decimum diem Decembris prox. ſequen. dat. billæ obligator. præd. & pro vera ſolutione inde obligavit ſe Executores & Adminiſtratores ſuos in plena ſumma viginti libr. legalis Anglicanæ monetæ Et præd. Thomaſina in facto dicit quod præd. Pethericus non ſolvit eidem Richardo in vita ſua præd. ſummam decem libr. apud vel ſuper decimum diem Decembris prox. ſequen. dat. billæ obligator. præd. quas eidem Richardo ſuper eundem diem ſolviſſe debuit ſecundum formam & effectum billæ obligator. præd. per quod actio accrevit eidem Richardo

Declaration by an Adminiſtrator upon a Bill obligatory to the Inteſtate.

N. B. The Defendant not having demurr'd, the bringing this Action in the *Debet & Detinet* is cured by the Verdict. 1 *Sid.* 342, 379. *Show.* 57.

chardo in vita ſua & præd. Thomaſinæ poſt mortem præd. Richardi ad exigend. & habend. de præfat. Petherico præd. ſummam viginti librar. præd. tamen Pethericus licet ſæpius requiſit &c. præd. viginti libr. eidem Richardo in vita ſua ſeu eidem Thomaſinæ poſt mortem præd. Richardi ſolvere omnino hucuſque recuſavit & adhuc eidem Thomaſinæ ſolvere recuſat ad dampnum ipſius Thomaſinæ viginti & quinque librar' Et inde producit ſectam &c. Et præd. Thomaſina profert hic in Cur. literas Adminiſtratorias præd. Richardi per quas ſatis liquet Cur. hic præd. Thomaſinam fore Adminiſtratric. præd. Richardi & inde habere Adminiſtration' &c.

The granting the Letters of Adminiſtration ought to have been here inſerted.

Et modo ad hunc diem ſcilicet diem Veneris prox. poſt craſtinum Sanctæ Trinitatis iſto eodem termino uſque quem diem præd. Pethericus habuit licentiam ad billam præd. interloquendi & tunc ad reſpondend' &c. coram Domino Rege apud Weſtmonaſterium venit tam præd. Thomaſina per Attorn. ſuum præd. quam præd. Pethericus per Joſephum Hawkey Attorn. ſuum Et idem Pethericus defendit vim & injur. quando &c. Et dicit quod ipſe de debito præd. virtute billæ obligator. præd. onerari non debet quia dicit quod billa illa præd. non eſt factum ſuum Et de hoc pon. ſe ſuper patriam Et præd. Thomaſina ſimiliter &c. Ideo ven. inde jur. coram Domino Rege apud Weſtm. die Mercurii prox. poſt tres ſeptimanas Sanctæ Trinitatis Et qui nec &c. ad recogn' &c. Quia tam &c. Idem dies datus eſt partibus prædictis ibidem &c. Poſtea continuat. inde proceſſ. inter partes præd. de placito præd. per jur. poſit. inde inter eas in reſpectum coram Domino Rege apud Weſtm. uſque diem Mercurii prox. poſt tres ſeptimanas Sancti Michaelis extunc prox. ſequen. Niſi juſtic. Domini Regis ad Aſſiſas in Com. præd. capiend. aſſign. prius die Veneris nono die Auguſti apud Launceſton in Com. præd. per formam ſtatut' &c. ven. pro defectu jur' &c. Ad quem diem coram Domino Rege apud Weſtm. venit. præd. Thomaſina per Attorn. ſuum præd. Et præfat. juſtic. Domini Regis coram quibus &c. miſer. hic recordum ſuum coram eis habitum in hæc verba Poſtea die & loco infracontent. coram Johanne Powell Mil. un juſtic. Domini Regis de Banco juſtic. ejuſdem Domini Regis ad Aſſiſas in Com. Cornub. capiend. aſſign. & Franciſco Swanton Ar. eidem Johanni Powell hac vice aſſociat. per formam Statuti &c. ven. infranominat. Thomaſina Gidley vidua per Attorn. ſuum infracontent. & infraſcript. Pethericus Williams licet ſolempniter exact. non ven. ſed defalt. fecit Ideo jur. unde infra fit mentio capiatur verſus eum per defalt' Et jur. juratæ illius exact. vener. qui ad veritat. de infracontent. dicend. elect. triat. & jurat. dicunt ſuper ſacramentum ſuum quod billa obligatoria infra ſpecificat. eſt factum præd. Petherici Williams prout præd. Thomaſina interius verſus eum narravit Et aſſidunt dampna ipſius Thomaſinæ occaſione detentionis debiti infraſcript. ultra miſ. & cuſtag. ſua per ipſam circa ſectam ſuam in hac parte appoſit. ad duos denar' Et pro miſ. & cuſtag. ill. ad quadraginta

Non eſt factum pleaded.

Imparlance.

Venire awarded.

Return of the *Poſtea*.

Default.

Verdict *pro Quer'*.

ſolid' Ideo conſideratum eſt quod præd. Thomaſina recuperet verſus præfat. Pethericum debitum ſuum præd. ac dampna præd. per jur. in forma præd. aſſeſ. necnon treſdecim libr. & decem ſolid. pro miſ. & cuſtag. ſuis præd. eidem Thomaſinæ per Cur. dicti Domini Regis nunc hic ex aſſenſu ſuo de incremento adjudicat' Quæ quidem dampna in toto ſe attingunt ad quindecim libr. decem ſolid. & duos denar' Et præd. Pethericus capiatur &c. *Capiatur.*

Placita coram Domina Regina apud Weſtm. de termino Sanctæ Trinitatis Anno Regni Dominæ Annæ nunc Reginæ Angliæ &c. tertio. Rotulo 90.

Slater *verſus* May. Vide fo. 42.

London, ff. MEmorandum, Quod als. ſcilt termino Paſchæ ultimo præterito coram Domina Regina apud Weſtm. venit Johannes Slater Adminiſtrator omnium & ſingulorum bonorum jurium & creditorum quæ fuer. Chriſtopheri Youlden defunct. tempore mortis ſuæ per Thomam Moore Attorn. ſuum Et protulit in Cur. dictæ Dominæ Reginæ tunc ibidem quandam billam ſuam verſus Johannem May in Cuſtod. Mar' &c. de placito tranſgr. ſuper caſum Et ſunt pleg. de proſequend. ſcilicet Johannes Doe & Richardus Roe Quæ quidem billa ſequitur in hæc verba ff. London ff. Johannes Slater Adminiſtrator omnium & ſingulorum bonorum jurum & creditorum quæ fuer. Chriſtopheri Youlden defunct. tempore mortis ſuæ queritur de Johanne May in Cuſtod. Mar. Mareſc. Dominæ Reginæ coram ipſa Regina exiſten. pro eo videlicet quod cum prædictus Johannes May viceſimo tertio die Januar. Anno Domini Milleſimo ſexcenteſimo nonageſimo nono apud London videlt. in Paroch. beatæ Mariæ de arcubus in Warda de Cheape indebitat. fuiſſet eidem Chriſtophero in vita ſua in triginta libr. legalis monetæ Angl. pro tant. denar. ſumma ipſius Chriſtopheri in vita ſua per ipſum Chriſtopherum in vita ſua præd. Johanni May ad ſpecial. inſtanc. & requiſition. ipſius Johannis

Declaration by an Adminiſtrator during the Abſence of Executor, for Money lent by the Inteſtate.

Indeb. Aſſump.

hannis May ante tempus illud mutuo dat. & accommodat' Et ſic inde indebitat. exiſten. ipſe præd. Johannes May in conſideratione inde poſtea ſcilt. eiſdem die & anno ſupradict. apud London præd. in Paroch. & Warda præd. ſuper ſe aſſumpſit & eidem Chriſtophero in vita ſua adtunc & ibidem fidelit. promiſit quod ipſe præd. Johannes May præd. triginta libr. eidem Chriſtophero cum inde poſtea requiſit. eſſet bene & fidelit. ſolvere & contentare vellet Cumque etiam præd. Johannes May poſtea ſcilt. eiſdem die & anno ſupradict. apud London præd. in Paroch. & Warda præd. indebitat. fuiſſet eidem Chriſtophero in vita ſua in al. triginta libr. ſimilis legalis monetæ Angliæ pro tal. denar. ſumma ipſius Chriſtopheri in vita ſua per ipſum Johannem May pro eodem Chriſtophero & ad uſum ipſius Chriſtopheri ante tempus illud habit. & recept' Et ſic inde indebitat. exiſten. prædict. Johannes May poſtea ſcilicet eiſdem die & anno ſupradict. apud London præd. in Paroch. & Warda præd. in conſideratione inde ſuper ſe aſſumpſit & eidem Chriſtophero in vita ſua adtunc & ibidem fidelit. promiſit quod ipſe præd. Johannes May præd. trigint. libr. ult. mentionat. eidem Chriſtophero cum inde poſtea requiſit. eſſet bene & fideliter ſolvere & contentare vellet Præd. tamen Johannes May ſeparal. promiſſion. & aſſumption. ſuas præd. in forma præd. fact. minime curans ſed machinans & fraudulent. intendens eundem Chriſtopherum in vita ſua & præd. Johannem Slater poſt ipſius Chriſtopheri mortem (Cui quidem Johanni Slater Adminiſtratio omnium & ſingulorum bonorum jurum & creditorum que fuer. præd. Chriſtopheri Youlden tempore mortis ſuæ cum teſtamento ſuo annexo in uſum beneficium & durante abſentia Elizabethæ Vittery Executric' in teſtamento præd. nominat. per Thomam providentia divina Cantuar. Archiepiſcopum totius Angliæ primat. & metropolitan. decimo quinto die Octobris Anno Domini Milleſimo ſeptingenteſimo tertio apud London præd. in Paroch. & Warda præd. debita juris forma commiſſa fuit) de præd. ſeparal. denar. ſummis in hac parte callide & ſubdole decipere & defraudare præd. ſeparal. denar. ſummas ſeu aliquem inde denar. eidem Chriſtophero in vita ſua ſeu præd. Johanni Slater poſt ipſius Chriſtopheri mortem non ſolvit nec eis pro eiſdem hucuſque aliqualiter contentavit (licet ad hoc faciend. præd. Johannes May per ipſum Chriſtopherum in vita ſua & per præd. Johannem Slater poſt ipſius Chriſtopheri mortem & Commiſſion. Adminiſtration. præd. apud London præd. in Paroch. & Warda præd. requiſit. fuit) ſed ill. eidem Chriſtophero in vita ſua ſolvere ſeu pro eiſdem aliqualit. contentare omnino recuſavit & præd. Johanni Slater ſolvere adhuc recuſat ad dampnum ipſius Johannis Slater quadragint. libr' Et inde produc. ſectam &c. Et profert hic in Cur. idem Johannes Slater literas adminiſtratorias præd. Archiepiſcopi præd. quæ commiſſion. adminiſtration. præd. Johanni Slater in forma præd. teſtantur quarum dat. eſt eiſdem die & anno in ea parte ſuperius mentionat. &c.

Another *Indeb. Aſſumpſ.* for Money had and received to the Inteſtate's Uſe.

Breach.

Letters of Adminiſtration ſet forth.

Requeſt.

2 Et

Et modo ad hunc diem ſcilicet diem Veneris prox. poſt craſtinum Sanctæ Trinitatis iſto eodem termino uſque quem diem præd. Johannes May habuit licenc. ad billam præd. interloquendi & tunc ad reſpondend' &c. coram Domina Regina apud Weſtm. venit tam præd. Johannes Slater per Attorn. ſuum præd. quam præd. Johannes May per Richardum Gates Attorn. ſuum Et idem Johannes May defendit vim & injur. quando &c. Et dicit quod narratio præd. materiaque in eadem content. minus ſufficien. in lege exiſtit ad præd. Johannem Slater ad actionem ſuam præd. inde verſus ipſum Johannem May habend. manutenend. Quodq; ipſe ad narrationem illam modo & forma præd. declarat. neceſſe non habet nec per legem terræ tenetur aliquo modo reſpondere Et hoc parat. eſt verificare Unde pro defectu ſufficien. narration. in hac parte idem Johannes May petit judicium ſi præd. Johannes Slater actionem ſuam præd. verſus ipſum Johannem May habere debeat &c. Et pro cauſis moration. in lege in hac parte idem Johannes May ſecundem formam ſtatuti in hujuſmodi caſu nuper edit. & proviſ. oſtend. & Cur. hic demonſtrat has cauſas ſubſequen. videlicet quod narratio præd. eſt omnino incerta duplex inſenſibilis inſufficien. in lege & caret forma &c. Demurrer to the Declaration.

Et præd. Johannes Slater dicit quod per aliqua per præd. Johannem May ſuperius præallegata Narr. præd. ipſius Johannis Slater caſſari minime debet quia dicit quod narratio præd. materiaque in eadem content. bon. & ſufficien. in lege exiſt. ad ipſum Johannem Slater ad actionem ſuam præd. inde verſus ipſum Johannem May habend. manutenend. quam quidem narrationem materiamque in eadem content. idem Johannes Slater parat. eſt verificare & probare prout Cur' &c. Et quia præd. Johannes May ad narr. ill. non reſpond. nec ill. hucuſque aliqualit. dedic. idem Johannes Slater petit judicium & dampna ſua occaſione præmiſſ. ſibi adjudicari &c. Sed quia Cur. dictæ Dominæ Reginæ nunc hic de judicio de & ſuper præmiſſ. reddend. nondum adviſatur dies inde dat. eſt partibus præd. coram Domina Regina apud Weſtm. uſque diem prox. poſt de judicio ſuo de & ſuper præmiſſ. ill. audiend. eo quod Cur. dictæ Dominæ Reginæ hic inde nondum &c. Joinder.

Placita

Placita coram Domino Rege apud Weſtm. de termino Sancti Michaelis Anno Regni Domini Willi. tertii nunc Regis Angl' &c. undecimo. Rotulo 377.

Biſhop of Salisbury *verſus* Phillips. Vide fo. 43.

Writ of Error.

DOMINUS REX Mandavit dilecto & fideli ſuo Georgio Treby Militi Capitali Juſticiario ſuo de Banco breve ſuum clauſum in hæc verba Scilicet Gulielmus tertius Dei Gratia Angliæ Scotiæ Franciæ & Hiberniæ Rex fidei defenſor' &c. Dilecto & fideli ſuo Georgio Treby Militi Capital. Juſtic. ſuo de Banco ſalutem Quia in recordo & proceſſu aceiam in redditione judicii loquelæ quæ fuit in Curia noſtra coram vobis & ſocis veſtris Juſtic. noſtris de Banco prædicto per breve noſtrum inter Willielmum Phillipps Executor. teſtamenti Willielmi Phillipps generoſi Patris ſui nuper defunct. & Gilbertum Epiſcopum Sarum & Johannem Berrow Clericum de eo quod iidem Epiſcopus & Johannes permitterent ipſum Willielmum Phillipps modo queren. præſentare idoneam perſonam ad Eccleſiam de Stanton als. Stanton Fitz-Warren als. Stanton Fitz-Herbert in Com. Wilts quæ vacabat & ad ſuam ſpectabat donationem ut dicibatur Error intervenit manifeſtus ad grave dampnum ipſorum Epiſcopi & Johannis ſicut ex querelâ ſua accepimus nos errorem ſi quis fuit modo debito corrigi & eiſdem Epiſcopo & Johanni plenam & celerem juſticiam fieri volentes in hac parte vobis mandamus quod ſi judicium inde reddit. ſit tunc recordum & proceſſum prædictum cum omnibus ea tangen. nobis ſub ſigillo veſtro diſtincte & aperte mittatis & hoc breve ita quod ea habeamus a die Paſchæ in quinque ſeptimanas ubicunque tunc fuerimus in Angl. ut inſpectis recordo & proceſſu prædictis ulterius inde pro errore ill. corrigend. fieri fac. quod de jure & ſecundum legem & conſuetud. Regni noſtri Angl. fuerit faciend. Teſte me ipſo apud Weſtm. viceſimo ſexto die Aprilis Anno Regni noſtri undecimo

Hale.

Reſponſ. Georgii Treby Mil. Capital. Juſtic. infranominat.

Record & proceſſ. loquelæ unde infra fit mentio cum omnibus ea tangen. coram Domino Rege ubicunq; &c. ad diem infracontent. mitto in quodam Recordo huic brevi annex. prout interius mihi præcipitur

Geo. Treby.

Placita irrotulat. apud Weſtm. coram Georgio Treby Mil. & Sociis ſuis Juſtic. Domini Regis de Banco de termino Sanctæ Trinitatis Anno Regni Domini Gulielmi tertii Dei Gratia Angliæ Scotiæ Franciæ & Hiberniæ Regis Fidei Defenſoris &c. decimo. Rotulo 1562.

Wilts ff. Gilbertus Epiſcopus Sarum & Johannes Berrow Clericus ſum. fuerunt ad reſpondend. Willielmo Phillipps generoſo Executor. teſtamenti & ult. voluntat. Willielmi Phillipps generoſi patris ſui nuper defunct. de placito quod permittant ipſum Willielmum Phillipps modo quer. præſentare idoneam perſon. ad Eccleſiam de Stanton als. Stanton Fitz-Warren als. Stanton Fitz-Herbert quæ vacat. & ad ſuam ſpectat donation' &c. Et unde idem Willielmus Phillipps modo quer. per Dionyſium Ruſſel Attorn. ſuum dicit quod cum quidam Richardus Organ & Johannes Organ fuer. ſeiſiti ut de feodo & jure de advocatione præd. Eccleſiæ ut de uno groſſo Et ſic inde ſeiſiti exiſten. præd. Richardus Organ & Johannes Organ viceſimo ſexto die Junii Anno Regni Domini Jacobi nuper Regis Angl. primi decimo tertio apud Stanton præd. in Com. præd. per quandam indentur. ſuam inter præd. Richardum Organ per nomen Richardi Organ de Lamborne in Com. Berks Gen. ex una parte & præd. Johannem Organ per nomen Johannis Organ de Stanton infra Hundred de Highworth in Com. Wilts. Gen. ex altera parte fact. cujus alteram partem ſigillo præd. Johannis Organ ſignat. idem Willielmus Phillipps modo quer. hic in Cur. profert cujus dat. eſt eiſdem die & anno concluſer. & agreaver. inter ſe quod ipſi præd. Richardus Organ & Johannes Organ forent deinde ſeiſit. in Communi non conjunctim de advocatione Eccleſiæ præd. ſcilicet quod dictus Richardus Organ ſtaret & eſſet ſeiſit. & haberet teneret & gauderet unam medietat. dictæ advocation. ſibi & hæred. ſuis & quod dictus Johannes Organ ſtaret & eſſet ſeiſit. & haberet teneret & gauderet alteram medietat. dictæ advocation. ſibi & hered. ſuis Et quod dicti Richardus Organ & Johannes Organ & eorum ſeparal. hæred. toties quoties dicta Eccleſia de Stanton deveniret vacua ſeparalit. & reſpective præſentarent per ſeparal. turnos alternis vicibus modo & forma ſequen. videlicet quod dictus Richardus Organ & hæred. ejus poterint præſentare ad dictam Eccleſiam in primo turno adinde quando dicta Eccleſia contingeret primo & prox. vacare & dictus Johannes Organ. & hæred. ſui poterint præſentare ad dictam Eccleſiam quando eadem tunc prox. vacaret ſecunda vice, Anglice *The ſecond Time*, & ſic dicti Richardus Organ & Johannes Organ ſeparaliter & eorum ſeparales & reſpectivi hæredes in eorum ſeparalibus turnis alternis vicibus ſicut eadem eccleſia aliquo tempore extunc deinceps deveniret vacua præſentarent vel poſſent præſentare clericos ſuos juxta ordinem & curſum, Anglice *Courſe*, præantea ut præfertur concluſ. & agreat. prout per eandem Indentur. inter al. plenius apparet per quod iidem Richardus & Johannes fuer. ſeiſit. de advocation. præd. ad præſentand. ad eandem eccleſiam in forma

Quare Impedit by the Executors of *Will. Philips.*

Declares upon an Agreement by Indenture between Joyntenants to preſent by Turns.

Profert of Indenture.

præd' Et ſic inde ſeiſit. exiſten. præd. Richardus Organ poſt confection. indentur. præd. ad eandem Eccleſiam vacan. incipiend. primum turnum ſuum ac ut in primo turno ſuo apud Stanton præd. præſentavit quendam Johannem Woodbridge Clericum ſuum qui ad præſentation. ipſius Richardi Organ fuit ibidem admiſſ. & inſtitut. in eadem tempore pacis tempore Domini Jacobi nuper Regis Angl. primi Ac poſtea Eccleſia præd. vacavit per mortem præd. Johannis Woodbridge ibidem per quod præd. Johannes ad eandem Eccleſiam ſic vacan. ut in ſecundo turno apud Stanton præd. præſentavit quendam Thomam Hotchkis Clericum ſuum quiad præſentation ipſius Johannis Organ fuit admiſſ. & inſtitut. in eadem tempore pacis tempore Domini Caroli nuper Regis Angl. primi prædictoque Richardo Organ & Johanne Organ ſic de advocatione præd. ſeiſit. exiſten. prædictus Richardus Organ poſtea apud Stanton præd. obiit de tali ſtatu ſuo inde ſeiſit. per & poſt cujus mortem medietas advocation. præd. cuidem Johanni Organ ut fratri & hæred. Richardi Organ deſcendebat per quod idem Johannes Organ frater de medietat. advocation. præd. ſeiſit. fuit ut de feodo & jure ad præſentand. in forma præd. Et ſic inde ſeiſit. exiſten. poſtea ſcilicet viceſimo quinto die Auguſti Anno Regni dicti nuper Regis Caroli primi decimo quarto per quandam indentur. inter ipſum Johannem Organ ex una parte & quendam Richardum Hippeſley de Stone Eaſton in Com. Somerſet Gen. conſanguin. nepot. Anglice *Nephew*, præd. Johannis Organ fratris videlicet ſecundus filius Elizabethæ Hippeſley Viduæ ſoror. naturalis dicti Johannis Organ fratris ex altera parte fact. apud Stanton præd. in Com. præd. cujus alteram partem ſigillo præd. Johannis Organ fratris ſignat. idem Willielmus Phillipps modo quer. hic in Cur. profert cujus dat. eſt eiſdem die & anno ult. ſupradictis & in conſideration. naturalis amoris & affectus quos habuit & geſſit erga dictum Richardum Hippeſley ac in conſideratione ſanguinis inter eos & melior. præferament. & advanciament. manutenentiæ & ſuſtentation. Anglice *Livelihood*, dicti Richardi Hippeſley & fratris ejus in eadem indentur. poſtea nominat. ipſe præd. Johannes Organ Frater pro ſe & hæred. ſuis conveniſſet conceſſiſſet & agreaſſet ad & cum dicto Richardo Hippeſley & hæred. ſuis quod ipſe dictus Johannes Organ frater hæred. & aſſign. ſui & quilibet eorum ac omnis & quælibet al. perſona & perſonæ & eorum hæred. qui tunc fuer. vel extunc impoſterum ſtarent & eſſent ſeiſit. de & in dicta medietat. advocation. præd. ſtarent & ſeiſit. eſſent de eadem ad opus & uſum dicti Richardi Hippeſley & hæred. de corpore dicti Richardi Hippeſley legitime procreand. & pro defect. tal. exitus ad opus & uſum Roberti Hippeſley fratris ipſius Richardi Hippeſley & hæred. de corpore dicti Roberti Hippeſley legitime procreand. & pro defect. tal. exitus ad opus & uſum dicti Johannis Organ fratris & hæred. & aſſign. ſuorum imperpetuum & ad. null. al. uſus intention. vel propoſita quæcunque prout per indentur. præd. ultimo

First Preſentment.

Vacancy *per mortem*.

Second Preſentment.

Diſcent of one Moiety.

Another Agreement by Indenture.

Conſideration.

Settled in Tail to the Uſes declared.

mentionat. plenius apparet Virtute cujus quidem indentur. ac vigore cujuſdem Actus in Parliamento Domini Henrici nuper Regis Angl. octavi apud Weſtm. in Com. Middleſex quarto die Februar. Anno Regni ſui viceſimo ſeptimo tent. edit. & proviſ. de uſibus in poſſeſſion. transferend. præd. Richardus Hippeſley fuit ſeiſit. de medietat. advocation. præd. ut de feodo taliat. & jure remaner. inde in forma præd. ſcilicet ad præſentand. in forma præd. ſpectan. prædictoque Richardo Hippeſley ſic inde ſeiſit. exiſten. poſtea apud Stanton præd. in Com. præd. obiit per & poſt cujus mortem dicta medietas advocation. præd. deſcendebat cuidem Richardo Hippeſley Ar. ut filio & hæred. de corpore prædicti Richardi Hippeſley per quod idem Richardus Hippeſley fil. de dicta medietat. advocation. præd. ſeiſit. fuit ut de feodo talliatio & jure Et idem Richardus Hippeſley filius ſic inde ſeiſit. exiſten. poſtea apud Stanton præd. obiit ſine exitu de corpore ſuo exeunt. per & poſt cujus mortem dicta medietas advocation. præd. deſcendebat cuidem Johanni Hippeſley Ar. ut al. filio & hæred. de corpore prædict. Richardi Hippeſley primo nominat. per quod præd. Johannes Hippeſley de dicta medietat. advocation. præd. ſeiſit. fuit ut de feodo & jure Et præd. Johannes Hippeſley ſic inde ſeiſit. exiſten. idem Johannes Hippeſley poſtea ſcilicet decimo ſexto die Januar. Anno Regni Domini Caroli nuper Regis Angl. ſecundi viceſimo quarto apud Stanton præd. in Com. præd. per quoddam ſcriptum ſuum quod idem Willielmus Phillipps modo quer. ſigillo præd. Johannis Hippeſley ſignat. hic in Cur. profert cujus dat. eſt eiſdem die & anno dedit & conceſſit Franciſco Symes Sen. de Kelmeſcott in Com. Oxon. Gen. & Willielmo Phillipps teſtatori de Eaton Haſtings in Com. Berks Gen. Exec. & Aſſign. ſuis primam & proximam advocationem donation. nomination. præſentation. & liberam diſpoſitionem præd. Eccleſiæ parochial. de Stanton als. dict. Stanton Fitz-Herbert als. Stanton Fitz-Warren volens ac per idem ſcriptum ſuum concedens quod liceret & licitum foret ad & pro dictis Franciſco Symes & Willielmo Phillipps teſtator. Executor. & aſſign. ſuis ad dictam Eccleſiam de Stanton Fitz-Herbert als. Stanton Fitz-Warren quandocunque vel quomodocunque per mortem reſignationem deprivationem ceſſion. permitation. diſmiſſion. aut alio quocunque modo per quem eadem Eccleſia tunc primo & prox. contingeret vacare ullum honeſtum & doctum Clericum præſentare pro tunc prox. turno tantum prout per ſcriptum præd. plenius apparet Virtute cujus conceſſion. iidem Franciſcus Symes & Willielmus Phillipps teſtator. de advocation. Eccleſiæ de Stanton præd. poſſeſſionat. fuer. ſcilt. ad præſentand. ad eandem eccleſiam cum tunc primo & prox. vacare contingeret Et ſic inde poſſeſſionat. exiſten. prædictus Franciſcus Symes poſtea apud Stanton præd. in Com. præd. obiit & præd. Willielmus Phillipps teſtator. ſupervixit & fuit de advocatione præd. ſolus poſſeſſionat. per jus accreſcendi &c. prædictoque Willielmo Phillipps teſtatore ſic inde poſſeſſionat. exiſten. Eccleſia præd. in vita præd. Willielmi Phillipps teſtator. vacavit

Grant of the next Avoidance to the Teſtator and *Fr. Symes*, their Executors and Aſſigns.

Fr. Symes, one of the Grantees dies and the Plaintiff's Teſtator ſurvives.

per

The Vacancy in the Teſtator's Life.

per mortem præd. Thomæ Hotchkis & adhuc vacan. exiſtit' Quæ quidem vacatio Eccleſiæ præd. per mortem præd. Thomæ Hotchkis eſt prima & proxima vacatio Eccleſiæ præd. poſt conceſſion. præd. eiſdem Franciſco Symes & Willielmo Phillipps per præfat. Johannem Hippeſley in forma præd. fact. & ea ratione ad prædictum Willielmum Phillipps teſtator. in vita ſua idoneam perſon. ad eccleſiam præd. ſic vacan. pertinuit præſentare Et præd. Epiſcopus & Johannes Berrow ipſum Willielmum Phillipps teſtator. injuſte impediver. prædictuſque Willielmus Phillipps teſtator. Eccleſia præd. ſic vacan. ut præfertur exiſten. poſtea ſcilicet viceſimo primo die Junii Anno Regni dict. Domini Regis nunc & Dominæ Mariæ nuper Reginæ Angl' &c. ſexto apud Stanton præd. in Com. præd.

Teſtator made his Will, and the Plaintiff his Executor and died.

condidit teſtamentum & ult. voluntat. ſuam ac per eandem conſtituit & ordinavit præd. Willielmum Phillipps modo quer. Executor. teſtamenti ſui præd. & poſtea ibidem obiit poſt cujus quidem Willielmi Phillipps teſtator. mortem præd. Willielmus Phillipps modo quer. accepit ſuper ſe on. & execution. teſtamenti præd. & te-

Will prov'd.

ſtamentum illud in debita juris forma probavit videlt. apud Stanton præd. & ea ratione ad ipſum Willielmum Phillipps modo quer. idoneam perſon. ad eccleſiam præd. ſic vacan. ad præſens pertinet præſentare & præd. Epiſcopus & Johannes Berrow ipſum Willielmum Phillipps modo quer. injuſte impediunt unde idem Willielmus Phillips modo quer. dicit quod deteriorat. eſt & dampnum habet ad valenciam ſexcent. libr' Et inde produc. ſectam &c. Cum

Avers the Life of the Grantor and the Identity of the Church.

hoc quod idem Willielmus Phillipps modo quer. verificare vult. quod præd. Johannes Hippeſley adhuc ſuperſtes & in plena vita exiſtit videlicet apud Stanton præd. in Com. præd. Et quod Eccleſia de Stanton als. Stanton Fitz-Warren als. Stanton Fitz-Herbert eſt una eademque Eccleſia & non alia neque diverſa Et pro-

Profert of the Letters teſtamentary.

fert hic in Cur. literas teſtatorias præd. Willielmi Phillipps teſtator. per quas ſatis liquet Cur. hic ipſum Willielmum Phillips modo quer. fore Executor. teſtamenti præd. & inde habere adminiſtrationem &c.

Plea, Parſon, Imparſonee.

Et prædictus Gilbertus Epiſcopus Sarum & Johannes Berrow Clericus per Johannem Carpenter Attorn. ſuum ven. & defend. vim & injur. quando &c. Et præd. Johannes Berrow dicit quod ipſe eſt parſon. imparſonat. Eccleſiæ prædict. ex collocatione præd. Epiſcopi Et præd. Epiſcopus & Johannes Berrow ulterius dicunt quod præd. Willielmus Phillipps executor. actionem ſuam præd. verſus eos habere non debet quia dicunt quod præd. Ec-

Admit the Vacancy and that after ſix Months the Biſhop preſented by Lapſe.

cleſia de Stanton als. Stanton Fitz-Warren als. Stanton Fitz-Herbert vacavit per mortem præd. Thomæ Hotchkis viceſimo die Septembris Anno Domini Milleſimo ſexcenteſimo nonageſimo tertio & ſic vacan. exiſtebat uſque viceſimum tertium diem Aprilis Anno Domini Milleſimo ſexcenteſimo nonageſimo quarto quo die apud Stanton præd. prædictus Epiſcopus eo quod adtunc ſex menſes poſt vacationem ejuſdem Eccleſiæ plene elapſ. devolut. fuer. ordinarius loci ill. exiſten. præd. Johannem Berrow Clericum ad Eccleſiam ill.

tunc vacan. contulit prout ei bene licuit Et hoc parat. ſunt verificare Unde pet. judic. ſi præd. Willielmus Executor actionem ſuam præd. verſus eos habere debeat &c.

Et prædictus Willielmus Phillipps Executor dicit quod ipſe per aliqua præallegat. ab actione ſua præd. habend. præcludi non debet quia dicit quod bene & verum eſt quod prædicta Eccleſia de Stanton als. Stanton Fitz-Warren als. Stanton Fitz-Herbert præd. per mortem præd. Thomæ Hotchkis præd. viceſimo die Septembris Anno Domini Milleſimo ſexcenteſimo nonageſimo tertio ſupradict. vacavit prout præd. Epiſcopus & Johannes Berrow placitando allegaver. ſet idem Willielmus Phillipps Executor ulterius dicit quod poſt præd. viceſimum diem Septembris Anno Domini Milleſimo ſexcenteſimo nonageſimo tertio ſupradict. & ante præd. viceſimum tertium diem Aprilis Anno Domini Milleſimo ſexcenteſimo nonageſimo quarto infra ſex menſes poſt mortem præd. Thomæ Hotchkis ſcilicet decimo ſexto die Octobris Anno Domini Milleſimo ſexcenteſimo nonageſimo tertio præd. Willielmus Phillipps teſtator per ſcriptum ſuum ſigillo ſuo ſigillat. cujus dat. eſt eodem decimo ſexto die Octobris Anno Domini Milleſimo ſexcenteſimo nonageſimo tertio apud Stanton præd. in Com. præd. præd. Epiſcopo adtunc præd. loci de Stanton als. Stanton Fitz-Warren als. Stanton Fitz-Herbert Ordinario præſentavit quendam Johannem Symes Artium Magiſtrum Clericum ſuum Et præd. Epiſcopum adtunc & ibidem requiſivit admittere & inſtituere eundem Johannem Symes ad Eccleſiam præd. ſic vacantem per mortem prædict. Thomæ Hotchkis quem quidem Johannem Symes præd. Epiſcopus ad Eccleſiam præd. ad præd. præſentation præd. Willielmi Phillipps teſtator. adtunc & ibidem admittere & inſtituere penitus recuſavit ac ipſum Willielmum Phillipps teſtator. ad præſentand. impedivit Et hoc parat. eſt verificare Unde pet. judic. & dampna occaſione impedimenti prædict. necnon breve præd. Epiſcopo ſibi adjudicari &c.

Replies and admits the Time of the Vacancy.

But ſays that within the ſix Months, to wit 16th, Oct. 1693, the Teſtator by Writing preſented *J. Symes*, and requeſted the Biſhop to admit him, who refuſed.

Et præd. Epiſcopus & Johannes Berrow dicunt quod bene & verum eſt quod præd. Willielmus Phillipps teſtator per ſcriptum ſuum ſigillo ſuo ſigillat. præſentavit præfat. Johannem Symes prout idem Willielmus Executor. ſuperius replicando allegavit Sed iidem Epiſcopus & Johannes Berrow ulterius dicunt quod poſtea & infra ſex menſes poſt vacation. Eccleſiæ præd. ſcilicet prædicto decimo ſexto die Octobris Anno Domini Milleſimo ſexcenteſimo nonageſimo tertio ſupradicto præd. Johannes Symes apud Stanton præd. retulit præſentationem præd. præd. Epiſcopo & requiſivit præd. Epiſcopum dare prædict. Johanni Symes paucos dies ad ſe præparand. fore examinat. de ſufficientia ſua in literatura ad habend. Eccleſiam præd. quodque prædict. Epiſcopus ſuperinde ſuper requiſitionem præd. Johannis Symes adtunc & ibidem dedit licenc. præd. Johanni Symes abire & ibidem redire præd. Epiſcopo infra tres dies prox. ſequen. fore examinat. de ſufficiencia ſua præd. qui quidem

Rejoin and admit the Preſentation, but ſay that *J. Symes* took it away, and deſired Time to prepare himſelf for Examination, and never returned.

tres dies diu ante finem ſex menſium poſt vacation. Eccleſiæ præd. per mortem prædict. Thomæ Hotchkis ſcilicet per ſpatium unius menſis finit. fuer. ſcilicet apud Stanton præd. Et præd. Epiſcopus & Johannes Berrow ulterius dicunt quod ipſe idem Epiſcopus per præd. tres dies poſtea ibidem parat. fuit ad examinand. præd. Johannem Symes de ſufficientia ſua præd. quodque præd. Johannes Symes nec infra prædict. tres dies nec unquam poſtea revenit nec ſe obtulit prædicto Epiſcopo fore examinat. de ſufficiencia ſua præd. per quod prædict. Eccleſia remanſit vacua per ſpacium ſex menſium & ultra poſt præd. vacationem per mortem præd. Thomæ Hotchkis ſuper quo idem Epiſcopus contulit prædict. Johannem Berrow ad Eccleſiam ill. ſic vacan. qui quidem Johannes Berrow poſtea in eadem Eccleſia debita juris forma induct. fuit abſque hoc quod præd. Epiſcopus præd. Johannem Symes ad Eccleſiam præd. ad præſentationem præd. Willielmi Phillipps teſtator. admittere & inſtituere penitus recuſavit prout præd. Willielmus Phillipps Executor ſuperius allegavit Et hoc parat. ſunt verificare Unde pet. judic. & quod præd. Willielmus Executor ab actione ſua prædicta præcludatur &c.

Traverſes his Refuſal to admit *J. Symes.*

Et prædict. Willielmus Phillipps Executor ut prius dicit quod præd. Epiſcopus præfat. Johannem Symes ad Eccleſiam præd. ad præſentation. præfat. Willielmi Phillipps teſtator. admittere & inſtituere penitus recuſavit prout idem Willielmus Phillipps Executor ſuperius inde replicando allegavit Et hoc pet. quod inquiratur per patriam Et præd. Epiſcopus & Johannes Berrow ſimiliter &c. Ideo præcept. eſt vic. quod Venire fac. hic a die Sanctæ Trin. in tres ſeptimanas duodecim &c. per quos &c. Et qui nec &c. ad recogn. &c. Quia tam &c. Ad quem diem hic ven. partes &c. Et vic. non miſ. breve ideo ſicut prius præcept. eſt vic. quod Venire fac. hic a die Sancti Michaelis in tres ſeptiman. duodecim &c. ad recogn. in forma præd' &c. Ad quem diem hic ven. partes &c. Et vic. non miſ. breve ideo ſicut prius præcept. eſt vic. quod Venire fac. hic in Octab. Purification. beatæ Mariæ duodecim &c. ad recogn. in forma præd' &c. Ad quem diem jurata inter partes præd. de prædicto placito poſit. fuit inde inter eas in reſpectum hic uſque ad hunc diem ſcilicet a die Paſchæ in quindecim dies tunc prox. ſequen. Niſi Juſtic. Domini Regis ad Aſſiſas in Com. prædicto capiend. aſſign. per formam ſtatuti &c. die Sabbati undecimo die Martii præteriti apud Novum Sarum in Com. præd. prius ven. Et modo hic ad hunc diem ven. prædictus Willielmus per Attorn. ſuum prædictum & præfat. Juſtic. ad Aſſiſas coram &c. miſ. hic recordum ſuum in hæc verba Poſtea die & loco infracontent. coram Thoma Rokeby Mil. un. Juſtic. Domini Regis ad placita coram ipſo Rege tenend. aſſign. & Johanne Powel Mil. un. Juſtic. dict. Domini Regis de Banco Juſtic. ipſius Domini Regis ad Aſſiſas in Com. Wilts capiend. aſſign. per formam ſtatuti &c. ven. tam

Surrejoinder and Iſſue upon the Traverſe.

Continuances *per non miſ. breve.*

Return of the *Poſtea.*

infranominat. Willielmus Phillipps Gen. Executor teſtamenti & ult. voluntat. Willielmi Phillipps Gen, patris ſui nuper defunct. quam infraſcript. Gilbertus Epiſcopus Sarum & Johannes Berrow Clericus per Attorn. ſuos infracontent' Et jur. juratæ unde infra fit mentio exact. ſimiliter vener. qui ad veritatem de infracontent. dicend. elect. triat. & jurat. dicunt ſuper ſacramentum ſuum quod prædict. Gilbertus Epiſcopus Sarum infranominat. Johannem Symes ad Eccleſiam infra mentionat. ad præſentationem præfat. Willielmi Phillipps teſtator. admittere & inſtituere penitus recuſavit prout præd. Willielmus Phillipps Executor. interius inde replicando allegavit Et jurator. præd. ſuper ſacramentum ſuum ulterius dicunt quod Eccleſia præd. eſt plena de præd. Johanne Berrow ex collatione præd. Gilberti Epiſcopi Sarum prout interius per ipſum allegatur quodque Eccleſia præd. eſt & tempore quo &c. fuit valoris Centum & viginti librar' per annum in omnibus exitibus ultra repriſas Et jurator. præd. aſſidunt dampna ipſius Willielmi Phillipps Executor. pro miſ. & cuſtag. ſuis per ipſum circa ſectam ſuam in hac parte appoſit. ad quadragint. ſolid' Ideo nullo habito reſpectu ad prædictos quadragint. ſolidos de dampnis & miſ. & cuſtag. præd. per jur. præd. occaſione impedimenti præd. aſſeſ. quia hujuſmodi dampna aut miſ. per legem terræ in hoc caſu nullatenus ſunt adjudicand. conſ. eſt quod prædictus Willielmus Phillipps Executor recuperet verſus præfat. Epiſcopum Sarum & Johannem Berrow præſentationem ſuam Eccleſiæ præd. & dampna ſua ad valorem Eccleſiæ ill. pro dimid. unius anni quæ ſe attingunt ad ſexagint. libr. per jur. præd. in forma præd. aſſeſſ. Et habeat breve Archiepiſcopi Cantuar. totius Angl. Primat. & loci ill. Metropolitan. eo quod prædictus Epiſcopus Sarum eſt pars &c. quia prædictus Johannes Berrow ad eandem Eccleſiam ad collationem prædicti Epiſcopi Sarum admiſſus & inſtitutus ac in eadem inductus exiſtit ad eundem Johannem Berrow ab Eccleſia ill. amovend. & ad Eccleſiam ill. ad præſentationem præd. Willielmi Phillipps Executor. idoneam perſonam admittat Et prædictus Epiſc. Sarum & Johannes Berrow in Miſericordia &c. Poſtea ſcilicet die lunæ prox. poſt tres ſeptiman. Sancti Michaelis iſto eodem termino coram Domino Rege apud Weſtmonaſterium ven. præd. Epiſcopus & Johannes Berrow per Adrian. Moore Attorn. ſuum & dicunt quod in record. & proceſſ. præd. acetiam in reddition. judic. præd. manifeſte eſt erratum in hoc videlicet quod per record. præd. apparet quod judicium præd. in forma præd. reddit. reddit. fuit pro præfat. Willielmo Phillipps verſus præfat. Epiſcopum & Johannem Berrow ubi per legem terræ hujus Regni Angl. judicium ill. reddi debuiſſet pro præfat. Epiſc. & Johanne Berrow verſus eundem Willielmum Phillipps ideo in eo manifeſte eſt erratum Erratum eſt etiam in hoc videlicet quod record. præd. coram Domino Rege nunc hic miſſum defectivum exiſtit in hoc videlicet quod breve originale & retorn. ejuſdem inter partes præd. in placito præd. extra

Find the Biſhop did refuſe to admit upon the Plaintiff's Preſentation, and the Church full upon the Biſhop's Collation, and the yearly Value 120 *l.*

Judgment and awarding a Writ to the Biſhop.

Miſericordia.

Errors aſſign'd.

tra record. ill. totaliter omittuntur & in Cuſtodia Cuſtodis brevium dicti Domini Regis nunc de Banco adhuc remanent eidem Domino Regi minime certificat' Et pet. iidem Epiſcopus & Johannes Berrow breve dicti Domini Regis nunc Cuſtod. brevium dicti Domini Regis nunc de Banco prædict. dirigend. ad breve præd. una cum retorn. ejuſdem brevis dicto Domino Regi certificand' Et eis conceditur &c. per quod mandat. eſt Willielmo Thursby Armig. Cuſtod. brevium Domini Regis de Banco præd. quod ſcrutat. brevibus original. Com. Wilts de termino Sanctæ Trinitatis Anno Regni dicti Domini Regis nunc octavo in Cuſtodia ſua de recordo exiſten. quid de brevi præd. in eiſdem invenerit unacum integro retorn. ejuſdem brevis adeo plene & integre prout in Cuſtodia ſua remanent Domino Regi indilate ubicunque &c. mittat unacum brevi dicti Dom. Regis ſibi inde direct' &c. Qui quidem Cuſtos brevium virtute brevis illius ſibi inde direct. eidem Domino Regi certificavit quod ſcrutatis brevibus originalibus Com. ſui Wilts de præd. termino Sanctæ Trinitatis Anno Regni ſui octavo in Cuſtodia ſua de recordo affilat. habetur quoddam breve originale inter partes præd. de placito præd. in Cuſtodia ſua de præd. termino affilat. tenor cujus quidem brevis unacum retorn. ejuſdem ſequitur in hæc verba Gulielmus tertius Dei Gratia Angl. Scotiæ Franciæ & Hiberniæ Rex Fidei Defenſor' &c. Vic. Wilts ſalutem Præcipe Gilberto Epiſcopo Sarum & Johanni Berrow Clerico quod juſte & ſine dilatione permittant Willielmum Phillips Executor. teſtamenti Willielmi Phillipps patris ſui nuper defunct. præſentare idoneam perſonam ad Eccleſiam de Stanton quæ vacat & ad ſuam ſpectat donationem ut dicit & unde queritur quod prædicti Epiſcopus & Johannes eum injuſte impediunt Et niſi fecerint & prædictus Executor fecerit te ſecur. de clam. ſuo prof. tunc ſum. per bonos ſum. prædictos Epiſcopum & Johannem quod ſint coram Juſtic. noſtris apud Weſtm. a die Sanctæ Trinitatis in quindecim dies oſtenſ. quare non fecerint Et habeas ibi ſum. & hoc breve Teſte Thoma Archiepiſcopo Cantuar. & cæteris Cuſtodibus & Juſtic. Regni apud Weſtm. viceſimo octavo die Maii Anno Regni noſtri octavo Hale Eſſon. pro Epiſcopo adjorn. uſque tres Michaelis Idem dies pro Clerico Eſſon. pro Clerico adjorn. uſque craſtinum Martini Idem dies pro Epiſc. W. Hall pleg. de prof. Johannes Doe & Richardus Roe ſum. Tho. Eyre Jo. Ruſſel Edvardus Somner Ar. Vic. Quod quidem breve de Certiorari unacum retorn. inde inter Record. ſine die iſtius termini affilatur Et ſuper hoc præd. Willielmus Phillipps per Joſephum Sherwood Attorn. ſuum ſtatim hic in Cur. ſimiliter ven' Et ſuperinde præd. Epiſcopus & Johannes Berrow (ut prius) dicunt quod in record. & proceſſ. præd. acetiam in redditione judicii præd. manifeſte eſt erratum allegando Error. præd. per ipſos in forma præd. ſuperius allegat. Et pet. quod judicium præd. ob error. præd. & al. in record. & proceſſ. præd. exiſten. revocetur adnulletur & penitus pro nullo habeatur Et quod

Certiorari.

Quare Impedit returned.

ipſi ad omnia quæ occaſione judicii prædict. amiſer. reſtituantur Et quod Cur. dicti Domini Regis nunc hic procedat ad examination. tam record. & proceſſ. præd. quam materiarum præd. ſuperius pro erroribus aſſign. quodque præd. Willielmus ad errores præd. rejungat Super quo idem Willielmus Phillipps dicit quod nec in record. & proceſſ præd. nec in redditione judicii præd. in ullo eſt erratum Et ſimiliter pet. quod Cur. dicti Domini Regis nunc hic procedat ad examination. tam record & proceſſ. præd. quam materiarum prædict. ſuperius pro error. aſſign. Et quod judicium præd. in omnibus affirmetur Sed quia Cur. dicti Domini Regis nunc hic de judicio ſuo de & ſuper præmiſſis reddend. nondum adviſatur dies inde dat. eſt partibus præd. coram Domino Rege uſque ubicunque &c. de judicio ſuo inde audiend. eo quod Cur. dicti Domini Regis nunc hic inde nondum &c. *Judicium affirmetur.*

Placita coram Domina Regina apud Weſtm. de Termino Sancti Michaelis Anno Regni Dominæ Annæ nunc Reginæ Angliæ &c. tertio. Rotulo 144.

Goddard *verſus* Smith, & al'. Vide fo. 21.

Middl. ff. *Memorandum*, Quod als. ſcilt. termino Sanctæ Trinitatis ultimo præterito coram Domina Regina apud Weſtm. venit Richardus Goddard per Henricum Wright Attorn. ſuum Et protulit in Cur. dictæ Dominæ Reginæ tunc ibidem quandam billam ſuam verſus Richardum Smith & Chriſtopherum Preſton in Cuſtod. Mar' &c. de placito tranſgr. ſuper caſum Et ſunt pleg. de proſequend. ff. Johannes Doe & Richardus Roe quæ quidem billa ſequitur in hæc verba ff. Middleſex ff. Richardus Goddard queritur de Richardo Smith & Chriſtophero Preſton in Cuſtod. Mar. Mareſc. Dominæ Reginæ coram ipſa Regina exiſten. pro eo videlicet quod cum præd. Richardus Goddard bonus verus fidel.

Declaration in Caſe upon Conſpiracy, for a falſe and malicious Indictment of Barretry. *Inde acquietat. fuit.*

pacificus & honeſt. Dominæ Reginæ nunc ſubdit. & ligeus exiſtit & bonorum nominis famæ reputation. converſation. geſtur. condition. fuit ac ut bonus verus fidel. pacificus & honeſt. ligeus & ſubdit. dictæ Dominæ Reginæ nunc abſque ullo ſcandalo imputation. ſive macula exiſten. Et ut Barectator ſeu pacis dictæ Dominæ Reginæ perturbator ſeu ſuſpicion. hujuſmodi criminis a tempore nativitat. ſuæ hucuſque inter vicinos ſuos & al. ſubdit. dictæ Dominæ Reginæ quibus idem Richardus Goddard cognit. fuit ſe minime geſſit & gubernavit & ratione honeſt. & quiet. converſation. ſuæ præd. per totum tempus prædict. magnam credenc. & eſtimation. necnon diverſa grandia lucra & proficua licite & honeſte pro ſuſtentation. ſua & familiæ ſuæ de vicinis ſuis & al. dictæ Dominæ Reginæ ſubdit. quibus idem Richardus Goddard commercium habuiſſet lucravit & acquiſivit Dicti tamen Richardus Smith & Chriſtopherus præmiſſorum non ignari ſed machinantes & malitioſe intenden. ipſum Richardum Goddard non ſolum de bon. nomine fama & eſtimation. ſuis præd. deprivare verum etiam ipſum Richardum Goddard in ſcandalum ignominiam & opprobrium publicum inducere ut ea ratione ſubdit. dictæ Dominæ Reginæ a conſortio ipſius Richardi Goddard ſe ſubſtraherent & cum eo aliqualit. intromittere ſive commercium habere omnino ceſſarent & abſtinerent decimo tertio die Septembris Anno Regni dictæ Dominæ Annæ nunc Reginæ Angl' &c. primo apud Paroch. Sancti Jacobi Clerkenwell in Com. præd. conſpiration. inter ſe adtunc & ibidem præhabita falſo & malitioſe abſque aliqua cauſa ſeu colore hujuſmodi criminis per ipſum Richardum Goddard perpetrat. ad ipſum Richardum Goddard ut Barectator. & publicum pacis dictæ Dominæ Reginæ perturbator. indictari cauſand. iidem Richardus Smith & Chriſtopherus apud Paroch. præd. in Com. præd. in proſecution. & execution. malitioſæ intention. necnon conſpiration. præd. ad general. quarterial. Seſſion. pacis Dominæ Reginæ tent. pro Com. Middleſex apud Hicks's-Hall in St. John-ſtreet in Com. præd. coram Johanne Bennet, Henrico Hawley & Joſepho Oſſley Ar. & al. ſociis ſuis Juſtic. dictæ Dominæ Reginæ ad pacem in Com. præd. conſervand. necnon ad diverſa felon. tranſgr. contempt. & malefacta in eodem Com. perpetrat. audiend. & terminand. aſſign. eundem Richardum Goddard ea intention. ad defamand. eundem Richardum Goddard abſque ulla legitima vel vera cauſa per nomen Richardi Goddard nuper de Paroch. Sancti Jacobi Clerkenwell in Com. Middleſex Yeom. de eo quod idem Richardus Goddard primo die Januarii Anno primo ſupradicto & diverſis al. diebus & vicibus tam antea quam poſtea apud Paroch. præd. in Com. præd. fuiſſet & adtunc fuit communis Barectator ac communis aſſiduus & publicus pacis dictæ Dominæ Reginæ nunc perturbator necnon communis & turbulent. calumpniator ac litium & diſcordiarum inter vicinos ſuos quiet. & honeſt. ſeminator adeo ut diverſ. lites controverſias necnon jurgia rixas & pugnas apud Paroch. præd. in Com. præd. &

Indictment at *Hicks's-Hall.*

alibi in dicto Com. Middleſex inter diverſ. dictæ Dominæ Reginæ ligeos & ſubdit. moviſſet procuraſſet & incitaſſet in magnam pacis dictæ Dominæ Reginæ nunc perturbation. in malum exemplum omnium aliorum in hujuſmodi caſu delinquen. ac contra pacem dictæ Dominæ Reginæ nunc coron. & dignitat. ſuas &c. falſo & malitioſe indictari fecer. & procuraver. ac indictament. ill. verſus ipſum Richardum Goddard falſo & malitioſe proſecut. fuer. & proſecut. eſſe cauſaver. quouſque dicta Domina Regina nunc indictament. ill. coram ea poſtea certis de cauſis venire fec. terminand. & præcept. fuit vic. Com. præd. quod non omitt' &c. quin eum venire fac. ad reſpondend' &c. & ipſe idem Richardus Goddard poſtea ſcilicet termino Sancti Michaelis Anno Regni dictæ Dominæ Reginæ nunc ſecundo in Cur. Dominæ Reginæ coram ipſa Regina eadem Cur. apud Weſtm. exiſten. ſecundum legem & conſuetudinem hujus Regni Angl. debito & legitimo modo inde exonerat. fuit Quorum quidem præmiſſorum verſus ipſum Richardum Goddard per præd. Richardum Smith & Chriſtopherum Preſton in forma præd. publicat. fact. exhibit. & proſecut. prætextu idem Richardus Goddard non ſolum in bonis nomine fama credenc. & reputation. ſuis præd. multipliciter læſus & deteriorat. & in corpore ſuo inquietat. & debilitat. exiſtit verum etiam diverſas ingentes denar. ſummas in & circa ſeipſum de indictament. ill. acquietand. & exonerand. & innocenc. ſuam vindicand. expendere & erogare coact. fuit in diſcredenc. maximam ac extremam diſpauperation. ipſius Richardi Goddard & ad dampnum ipſius Richardi Goddard viginti librarum Et inde produc. ſectam &c.

Remov'd by *Certiorari.*

Diſcharged.

Et modo ad hunc diem ſcilicet diem Lunæ prox. poſt tres ſeptimanas Sancti Michaelis iſto eodem termino uſque quem diem præd. Richardus Smith & Chriſtopherus habuer. licenc. ad billam præd. interloquend. & tunc ad reſpondend' &c. coram Domina Regina apud Weſtm. venit tam præd. Richardus Goddard per Attorn. ſuum præd. quam præd. Richardus Smith & Chriſtopherus per Edmundum Butler Attorn. ſuum Et iidem Richardus Smith & Chriſtopherus defend. vim & injur. quando &c. Et dicunt quod ipſi in nullo ſunt culpabiles de præmiſſis ſuperius eis impoſit. prout præd. Richardus Goddard ſuperius verſus eos queritur Et de hoc pon. ſe ſuper patriam Et præd. Richardus Goddard ſimiliter &c. Ideo ven. inde jur. coram Domina Regina apud Weſtm. die Lunæ prox. poſt craſtinum animarum Et qui nec &c. ad recogn' &c. quia tam &c. idem dies dat. eſt partibus præd. ibidem &c.

Not guilty pleaded.

Placita

Placita coram Domina Regina apud Weſtm. de termino Sanctæ Trinitatis Anno Regni Dominæ Annæ nunc Reginæ Angliæ &c. tertio. Rotulo 211.

Tenant *verſus* Gouldwin. Vide fo. 21.

Middl. ff. *Memorandum*, Quod als. ſcilicet termino Paſchæ ultimo præterito coram Domina Regina apud Weſtm. venit Robertus Tenant per Johannem Rice Attorn. ſuum Et protulit in Cur. dictæ Dominæ Reginæ tunc ibidem quandam billam ſuam verſus Lucam Gouldwin in Cuſtod. Mar' &c. de placito tranſgr. ſuper caſum Et ſunt pleg. de proſequend. ſcilicet Johannes Doe & Richardus Roe Quæ quidem billa ſequitur in hæc verba ff. Middleſex ff. Robertus Tenant queritur de Luca Gouldwin in Cuſtod. Mar. Mareſc. Dominæ Reginæ coram ipſa Regina exiſten. pro eo videlicet quod cùm ipſe idem Robertus primo die Octobris Anno Regni Dominæ Annæ nunc Reginæ Angl' &c. primo & abinde ſemper hucuſque poſſeſſionat. fuiſſet & adhuc poſſeſſionat. exiſtit de uno Meſuagio ſcituat. jacen. & exiſten. in Frith-ſtreet in Paroch. Sanctæ Annæ infra libertat. Weſtm. in Com. Middleſex præd. pro quodam termino annorum nondum finit. ac in cellario ſuo parcell. Meſuag. ſui præd. reponere & conſervare ſolebat carbon. ac illupulat. cerviſiæ copias pro uſu familiæ ſuæ necnon ad vendend. & merchandizand. diverſis perſonis quæ de ipſo commoditat. præd. emere ſolebant in Meſuagio ſuo præd. ad ipſius Roberti non modicum proficuum & utilitat. Quod quidem cellarium contigue adjacet & per totum tempus præd. contigue adjacebat Meſuagio præd. Lucæ in Paroch. præd. & de forica parcell. præd. Meſuagii præfat. Lucæ ſeparari & vallari ſolebat per murum craſſum & compactum qui ad dictum Meſuagium præfat. Lucæ pertinet & per præfat. Lucam per totum tempus præd. de jure debuit reparari præfat. tamen Lucas præmiſſorum non ignarus ſed machinans & fraudulent. intendens ipſum Robertum in hac parte minus rite prægravare & ipſum Robertum de uſu & commoditate cellarii Meſuagii ſui præd. totaliter deprivare & de proficuo commercii ſui præd. impedire eodem primo die Octobris Anno Regni dictæ Dominæ Reginæ ſupradicto & abinde ſemper hucuſque murum præd. licet ſæpius requiſit. eundem reparare ſcilicet per ipſum Robertum eodem

Caſe for not repairing a partition Wall, whereby the Plaintiff was prejudic'd.

Averment of the Uſage.

Breach.

primo die Octobris in Paroch. præd. tam negligent. cuſtodivit & reparavit quod ob defectum debit. curæ & reparation. ejuſdem Muri fœditates & ſordida foricæ præd. de eadem forica per decaſus & fraction. muri præd. in cellar. præd. ejuſdem Roberti fluebant & cellarium præd. inundabant ſcilicet in Paroch. præd. per totum tempus præd. per quod ipſe idem Robertus uſum cellarii ſui & profficuum commercii ſui præd. per totum tempus præd. perdidit & amiſit Unde idem Robertus dicit quod ipſe deteriorat. eſt & dampnum habet ad valenciam centum librarum Et inde producit ſectam &c. Plaintiff damnified.

Et modo ad hunc diem ſcilicet diem Veneris prox. poſt craſtinum Sanctæ Trinitatis iſto eodem termino uſque quem diem præd. Lucas habuit licentiam ad billam præd. interloquend. & tunc ad reſpondend' &c. coram Domina Regina apud Weſtm. venit præd. Robertus per Attorn. ſuum præd. Et petit quod præd. Lucas ad narrationem ſuam præd. reſpondeat Et prædictus Lucas licet ad eundem diem ſolempniter exact. non ven. nec aliquid dicit in barram ſive præcluſionem actionis prædictæ Roberti præd. per quod idem Robertus remanet inde verſus eum indefenſ. Ob quod prædictus Robertus dampna ſua verſus præfat. Lucam recuperare debeat Sed quia Cur. dictæ Dominæ Reginæ nunc hic coram ipſa Regina incognit. exiſtit quæ dampna prædictus Robertus occaſione præmiſſorum in hac parte ſuſtinuit —— Ideo præcept. eſt vic. quod per ſacramentum duodecim proborum & legalium hominum de balliva ſua diligent. inquirat quæ dampna prædictus Robertus tam occaſione præmiſſorum quam pro miſis & cuſtagiis ſuis per ipſum circa ſectam ſuam in hac parte appoſit. ſuſtinuit Et inquiſition. quam inde ceperit Dominæ Reginæ apud Weſtm. die Lunæ prox. poſt tres ſeptiman. Sancti Michaelis ſub ſigillo ſuo & ſigillis eorum per quorum ſacram. inquiſition. ill. ceperit mittat unacum brevi Dominæ Reginæ ei inde direct. idem dies dat. eſt eidem Roberto ibidem &c. Judgment *per Nil dicit.*

Placita coram Domina Regina apud Weſtm. de termino Sancti Hillarii Anno Regni Dominæ Annæ nunc Reginæ Angliæ &c. tertio. Rotulo 102.

Brook *verſus* Huſtler. Vide fo. 56.

Angl', ſſ. DOMINA REGINA mandavit dilecto & fideli ſuo Thomæ Trevor Mil. Capital. Juſtic. ſuo de Banco breve ſuum clauſum in hæc verba ſſ. Anna Dei Gratia Angliæ Scotiæ Franciæ & Hiberniæ Regina Fidei Defenſor &c. Dilecto & fidel. ſuo Thomæ Trevor Mil. Capital. Juſtic. ſuo de Banco ſalutem Quia in recordo & proceſſu acetiam in redditione judicii loquelæ quæ fuit in Cur. noſtra coram vobis & ſociis veſtris Juſtic. noſtris de Banco per breve noſtrum inter Willielmum Huſtler Richardum Osbadeſton Mil. & Willielmum Osbadeſton Armig. & Thomam Brook nuper de Overflocton in Com. Eborùm Yeom. de debito ſeptuagint. & novem ſolid. & undecim denar. quod iidem Willielmus Richardus & Willielmus a præfat. Thoma exigunt ut dicitur Error. interven. manifeſt. ad grave dampnum ipſius Thomæ ſicut ex querela ſua accepimus Nos error. ſi quis fuit modo debito corrigi & partibus præd. plenam & celerem juſtic. fieri volentes in hac parte vobis mandamus quod ſi judicium inde reddit. ſit tunc record. & proceſſ. præd. cum omnibus ea tangen. nobis ſub ſigillo veſtro diſtincte & aperte mittatis & hoc breve ita quod ea habeamus a die Paſchæ in quindecim dies ubicunque tunc fuerimus in Angl. ut inſpect. record. & proceſſ. præd. ulterius inde pro error. illo corrigend. fieri fac. quod de jure & ſecundum legem & conſ. Regni noſtri Angl. fuerit faciend. Teſte me ipſa apud Weſtm. ſecundo die Martii Anno Regni noſtri ſecundo

Hungerford.

Reſponſ. Thomæ Trevor Mil. Capital. Juſtic. infranominat. Record. & proceſſ. loquelæ unde infra fit mentio cum omnibus ea tangen. coram Domina Regina ubicunque &c. Ad diem infracontent. mitto in quodam recordo huic brevi annex. prout interius mihi præcipitur

Tho. Trevor.

Placita Irrotulat. apud Weſtm. coram Thoma Trevor Mil. & ſociis ſuis Juſtic. Dominæ Reginæ de Banco de termino Sancti Hillarii Anno Regni Dominæ Annæ Dei Gratia Angliæ Scotiæ Franciæ & Hiberniæ Reginæ Fidei Defenſor' &c. ſecundo. Rotulo 1228.

Ebor' ſſ. Thomas Brook nuper de Overflocton in Com. præd. Yeom. ſum. fuit ad reſpondend. Willielmo Huſtler Mil. Richardo Osbaldeſton Mil. & Willielmo Osbaldeſton Armig. de placito quod reddat. eis ſeptuagint. & novem ſolid. & undecim denar. quos eis debet & injuſte detinet &c. Et unde iidem Willielmus Huſtler Richardus & Willielmus Osbaldeſton per Robertum Hopkinſon Attorn. ſuum dicunt quod Dominus Jacobus primus nuper Rex Angl. fuit. ſeiſit. in jure coronæ ſuæ Angl. ut de feodo & jure de & in Cur. let. & viſ. franc. pleg. cum pertin. & tot. & quolibet quod ad Cur. let. ſeu viſ. franc. pleg. pertinebat ſeu quoviſmodo ſpectabat ſeu pertinere aut ſpectare debuit infra maner. ſive Domin. Vill. ſeu Hamlet. de Weſt Bretton Cawthorne Overflocton & Nether Flocton in præd. Com. Eborum ac infra præcinct. eorundem maneriorum ſive Dominic. Vill. & Hamlet. & eorum cujuſlibet in præd. Com. Ebor. exiſten. vel non exiſten. parcell. Ducat. Lancaſtr. de omnibus reſiden. & inhabitan. infra maner. ſive Dom. Vill. & Hamlet. præd. ac infra præcinct. eorund. maner. ſive Dom. Vill. & Hamlet & eorum cujuſlibet ſive eorum alicujus præd. Cur. let. viſ. & franc. pleg. præd. bis per ann. tenend. infra maner. ſive Dom. Vill. & Hamlet. præd. aut eorum aliquod vel infra præcinct. eorundem maneriorum ſive Dom. Vill. & Hamlet. vel eorum alicujus ad tal. dies & tempora in anno qual. prædictus Dominus Rex Jacobus primus hæred. vel aſſign. ſui vider. ſeu vider. opportun. convenien. & neceſſar. ſecundum legem & conſuetud. hujus Regni Angl. coram Seneſchallo ejuſdem Domini Regis Cur. illius aut deputat. hujuſmodi Seneſchalli pro tempore exiſten. Et ſic inde ſeiſit. exiſten. nuper Rex Jacobus primus poſtea per literas ſuas paten. ſub magno ſigillo Angl. ac ſub ſigillo Ducat. Lancaſtr. ſimilit. confect. geren. dat. apud Weſtm. in Com. Middleſex viceſimo nono die Junii Anno Regni ſui Angl. decimo tertio ac Scot. quadrageſimo octavo quas iidem Willielmus Huſtler Richardus & Willielmus Osbaldeſton hic in Cur. proferunt tam pro & in conſ. ſum. viginti ſolid. legalis monetæ Angl. ad recept. Scaccarii ſui apud Weſtm. ad uſum ſuum per dilect. ſubdit. ſuum Georgium Wentworth de Bulkliffe in Weſt Bretton in Com. Eborum Gen. bene & fidelit. ſolut. Unde idem nuper Dominus Rex fatebatur ſe plenarie eſſe ſatisfact. & perſolut. quam pro diverſis al. bonis cauſis & conſ. eundem Dom. Regem ſpecialit. moven. de gra. ſua ſpeciali ac ex certa ſcientia & ex mero motu ſuis dedit & conceſſit pro ſe hæred. & ſucceſſor. ſuis præfat. Georgio Wentworth hæred. & aſſign. ſuis de cætero imperpetuum quod haberent tenerent & gauderent ac habere tenere & gaudere valerent & poſſent infra

Declaration for an Amerciament in a Court-Leet.

Seiſin of King *James* I. in a Court-Leet.

Grant thereof to *Wentworth* by Letters Patent under the Dutchy-Seal.

infra maneria ſive Dom. Vill. ſeu Hamlet. de Weſt Bretton Cawthorne Over Flocton & Nether Flocton & eorum quodlibet in dicto Com. Eborum ac infra præcinct. eorundem maneriorum ſive Dominic. Vill. & Hamlet. & eorum cujuſlibet in dicto Com. Eborum exiſten. vel non exiſten. parcell. Ducat. Lancaſtriæ præd. Cur. let. & viſ. franc. pleg. de omnibus tenend. reſiden. & Inhabitan. & al. reſiden. venien. infra Dominia ſive maneria Vill. & Hamlet. præd. ac infra præcinct. eorundem maneriorum ſive Dominiorum Vill. & Hamlet & eorum cujuſlibet ſive eorum alicujus præd. Cur. let. & viſ. franc. pleg. bis per ann. de tempore in tempus tenend. infra maneria ſive Dominia Vill. & Hamlet. præd. aut eorum aliquod vel infra præcinct. eorundem maneriorum ſive Dominiorum Vill. & Hamlet vel eorum alicujus eiſdem locis diebus & temporibus quibus præd. Georgius Wentworth hæred. vel aſſign. ſui vider. ſeu vider. opportunum convenien. & neceſſar. ſecundum legem & conſuetudinem hujus Regni Angl. coram Seneſchallo ejuſdem Georgii Wentworth hæred. & aſſign. ſuorum pro tempore exiſten. ſeu coram Deputat. hujuſmodi Seneſchalli pro tempore exiſten. Et tot. & quicquid ad Cur. let. ſeu viſ. franc. pleg. pertinuit ſeu quoquomodo ſpectabat ſeu pertinere aut ſpectare debuit quoviſmodo Acetiam omnia & ſingula amerciamenta fines foriſfactur. pœnas pœnalitat. perquiſit. profic. libertat. præheminen. privileg. jura & juriſdiction. quæcunque ad præd. Cur. let. ſeu viſ. franc. pleg. ad dictum Dom. Regem aut Succeſſor. ſuos quoquomodo pertinere poterint aut deberent Quarum quidem literarum patentium prætextu præd. Georgius Wentworth ſeiſit. fuit ut de feodo & jure de & in Cur. let. & viſ. franc. pleg. præd. cum pertin. Et diverſas Cur. & viſ. franc. pleg. infra Maneria ſive Dominia Vill. ſeu Hamlet. de Weſt Bretton Crawthorne Over Flocton & Nether Flocton præd. ſecundum donation. & conceſſ. præd. in Literis Paten. præd. content. tenuit Et præd. Georgius ſic de Cur. let. & viſ. franc. pleg. præd. cum pertin. ſeiſit. exiſten. poſtea ſcilicet ſecundo die Julii Anno Domini Milleſimo ſexcenteſimo triceſimo octavo apud Nether Flocton præd. obiit poſt cujus mortem præd. Cur. let. & viſ. franc. pleg. præd. cum pertin. diſcendebant Willielmo Wentworth Gen ut filio & hæred. ipſius Georgii per quod præd. Willielmus Wentworth filius & hæres præd. Georgii ſeiſit. fuit ut de feodo & jure de & in Cur. let. & viſ. franc. pleg. præd. cum pertin. Et ſic inde ſeiſit. exiſten. idem Willielmus poſtea ſcilicet quarto die Martii Anno Domini Milleſimo ſexcenteſimo triceſimo nono apud Nether Flocton præd. obiit ſine aliquo exitu de corpore ſuo exeun. poſt cujus mortem præd. Cur. let. & viſ. franc. pleg. præd. cum pertin. diſcendebant Thomæ Wentworth Ar. poſtea Bar. ut fratri & hæred. præd. Willielmi Wentworth per quod præd. Thomas Wentworth ut frater & hæres præd. Willielmi Wentworth fuit ſeiſit. de & in Cur. let. & viſ. franc. pleg. præd. cum pertin. ut de feodo & jure Et ſic inde ſeiſit.

To be held twice a Year at ſuch Days as the Grantee ſhould think fit.

Grantee ſeis'd and held ſeveral Courts, and died.

Diſcent to his Son and Heir, who was ſeis'd,

And died without Iſſue, whereby they diſcended to his Brother.

exiſten. idem Thomas poſtea ſcilicet primo die Aprilis Anno Domini Milleſimo ſexcenteſimo ſeptuageſimo ſexto apud Nether Floſton præd. obiit ſine aliquo exitu de corpore ſuo exeun. poſt cujus mortem præd. Cur. let. & viſ. franc. pleg. cum pertin. diſcendebant Matthæo Wentworth. Bar. ut fratri & hæred. præd. Thomæ Wentworth per quod præd. Matthæus ut frater & hæres præd. Thomæ Wentworth fuit ſeiſit. de & in præd. Cur. let. & viſ. franc. pleg. præd. cum pertin. ut de feodo & jure Et ſic inde ſeiſit. exiſten. idem Matthæus poſtea ſcilicet ſecundo die Auguſti Anno Domini Milleſimo ſexcenteſimo ſeptuageſimo octavo apud Nether Floſton præd. obiit poſt cujus mortem præd. Cur. let. & viſ. franc. pleg. cum pertin. diſcendebant Matthæo Wentworth Bar. ut filio ut hæredi præd. Matthæi Wentworth fratris per quod prædictus Matthæus Wentworth filius fuit ſeiſit. de & in præd. Cur. let. & viſ. franc. pleg. cum pertin. ut de feodo & jure Et præd. Matthæus ſic inde ſeiſit. exiſten. poſtea ſcilicet octavo die Decembris Anno Domini Milleſimo ſexcenteſimo nonageſimo tertio per quandam indentur. barganiæ & vendition. inter ipſum Matthæum Wentworth filium ex una parte & præd. Willielmum Huſtler Richardum Osbaldeſton & Willielmum Osbaldeſton ex altera parte apud Nether Floſton præd. fact. cujus quidem alteram partem ſigillo ipſius Matthæi Wentworth filii ſigillat. iidem Willielmus Huſtler Richardus & Willielmus Osbaldeſton hic in Cur. proferunt cujus dat. eſt eiſdem die & anno in conſideration. quinque ſolid. ei præmanibus ſolut. per præd. Willielmum Huſtler Richardum & Willielmum Osbaldeſton barganizavit & vendidit eiſdem Willielmo Huſtler Richardo & Willielmo Osbaldeſton præd. Cur. let. & viſ. franc. pleg. cum pertin. habend. & tenend. eiſdem Willielmo Huſtler Richardo & Willielmo Osbaldeſton Executor. Adminiſtrator. & Aſſign. ſuis a die dat. Indentur. præd. uſque finem & terminum unius Anni extunc prox. ſequen. & plenar. complend. & finiend. Virtute cujus quidem barganiæ & vendition. ac vigore ſtatuti de uſibus in poſſeſſion. transferend. in ea parte edit. & proviſ. iidem Willielmus Huſtler Richardus & Willielmus Osbaldeſton fuer. poſſeſſion. de Cur. let. & viſ. franc. pleg. præd. pro termino illo Et ſic inde poſſeſſionat. exiſten. prædictoque Matthæo Wentworth filio de reverſione Cur. let. & viſ. franc. pleg. præd. cum pertin. ut de feodo & jure ſeiſit. exiſten. poſtea ſcilicet nono die Decembris Anno Domini Milleſimo ſexcenteſimo nonageſimo tertio ſupradicto apud Nether Floſton præd. per quandam aliam indentur. inter ipſum Matthæum Wentworth filium ex una parte & prædictos Willielmum Huſtler Richardum Osbaldeſton & Willielmum Osbaldeſton ex altera parte fact. cujus quidem alteram partem ſigillo ipſius Matthæi Wentworth filii ſigillat. iidem Willielmus Huſtler Richardus & Willielmus Osbaldeſton hic in Cur. proferunt cujus dat. eſt eiſdem die & anno ſupradictis ipſe idem Matthæus Wentworth filius relaxavit eiſdem Willielmo Huſtler Richardo

Who died alſo without Iſſue, whereby they diſcended to his Brother,

After whoſe Death they diſcended to his Son, who entered.

And by Leaſe and Releaſe conveyed to the Plaintiffs.

chardo & Willielmo Osbaldeſton hæred. & aſſign. ſuis tot. ſtatum jus titulum & intereſſe ipſius Matthæi Wentworth filii de & in Cur. let. & viſ. franc. pleg. præd. cum pertin. Quorum quidem præmiſſorum prætextu præd. Willielmus Huſtler Richardus & Willielmus Osbaldeſton fuer. & adhuc exiſtunt ſeiſit. de & in Cur. let. & viſ. franc. pleg. præd. cum pertin. ut de feodo & jure præd. quodque Thomas Bróoke viceſimo quarto die Aprilis Anno Domini Milleſimo ſeptingenteſimo tertio & diu antea fuit reſiden. & inhabitan. apud Over Flocton præd. infra jur. let. & viſ. franc. pleg. præd. & debuit ſectam facere ad Cur. viſ. franc. pleg. præd. ipſiſque Willielmo Huſtler Richardo & Willielmo Osbaldeſton de Cur. let. & viſ. franc. pleg. præd. cum pertin. ſic ut præfertur ſeiſit. exiſten. Cur. let. & viſ. franc. pleg. præd. tent. fuit apud Nether Flocton præd. infra Maneria & Dom. præd. dicto viceſimo quarto die Aprilis Anno Domini Milleſimo ſeptingenteſimo tertio coram Richardo Witton Armig. Seneſchallo eorundem Willielmi Huſtler Richardi & Willielmi Osbaldeſton Cur. illius de qua quidem Cur. ſic tenend. debita notitia dat. fuit reſiden. & inhabitan. infra Maner. Dom. Vill. & Hamlet. præd. ſcilicet apud Nether Flocton præd. quodque præd. Thomas Brooke ad Cur. ill. ſectam ſuam non fec. nec comperuit ſed defalt. fec. per quod ad eandem Cur. per Juratores qui ad inquirend. & præſentand. ea que ad Cur. let. & viſ. franc. pleg. pertinuer. in eadem Cur. jurat. & onerat. fuiſſent præſentat. fuit ſuper ſacramentum ſuum quod præd. Thomas Brooke adtunc fuit reſiden. & inhabitan. infra Maneria præd. & infra juriſdiction. Cur. viſ. franc. pleg. præd. & debuit ſectam facere ad Cur. viſ. franc. pleg. ill. & quod prædictus Thomas Brooke licet adtunc ſolempniter exact. fuit non comperuit ſed defalt. fecit ratione cujus idem Thomas Brooke adtunc & ibidem per eandem Cur. amerciat. fuit quod quidem amerciamentum per Joſephum Senior & Timotheum Roads adtunc reſiden. & inhabitan. infra Maneria prædicta afferatores per Cur. ill. adtunc & ibidem elect. & jurat. adtunc in Cur. illa debito modo afferat. fuit ad triginta & novem ſolid. & undecim denar. legalis monetæ Angliæ Unde præd. Thomas Brooke poſtea ſcilicet die & anno ult. mentionat. apud Nether Flocton præd. notitiam habuiſſet per quod actio accrevit eiſdem Willielmo Huſtler Richardo & Willielmo Osbaldeſton ad exigend. & habend. de præd. Thoma Brooke præd. trigint. & novem ſolid. & undecim denar. parcell. Cumque etiam præd. Thomas Brooke poſtea ſcilicet primo die Julii Anno Domini Milleſimo ſeptingenteſimo tertio apud Nether Flocton præd. mutuat. fuiſſet de Willielmo Huſtler Richardo & Willielmo Osbaldeſton quadragint. ſolid. de præd. ſeptuagint. & novem ſolid. & undecim denar. reſid. ſolvend. eiſdem Willielmo Huſtler Richardo & Willielmo Osbaldeſton cum inde requiſit. fuiſſet prædictus tamen Thomas Brooke licet ſæpius requiſit. præd. ſeptuagint. & novem ſolid. & undecim denar. nec aliquem inde denar. eiſdem Willielmo Huſtler Richar-

Plaintiffs ſeis'd.

Defendant an Inhabitant within the Juriſdiction of the Leet, and owed Suit.

Court held *April* 24. 1703.

whereof Notice was given to the Inhabitants.

Defendant made Default in not appearing whereby the Jury preſented him.

And he was amerced by the Court, and affeer'd by two Afferors choſen and ſworn at 39 *s.* 11 *d.* whereof he had Notice.

Per quod actio accrevit quer.

Mutuatus for 40 *s.*

do & Willielmo Osbaldeſton ſeu eorum alicui nondum reddidit ſed ill. eis aut eorum alicui hucuſque reddere contradixit & adhuc contradic. Unde dic. quod deteriorat. ſunt & dampnum habent ad valenc. centum ſolidorum Et inde produc. ſectam &c.

Et prædictus Thomas Brooke per Henr. Wood Attorn. ſuum ven. & defend. vim & injur. quando &c. Et nichil in barram ſive præcluſion. action. præd. Willielmi Huſtler Richardi & Willielmi Osbaldeſton præd. dic. per quod iidem Willielmus Huſtler Richardus & Willielmus Osbaldeſton reman. verſus præfat. Thomam Brooke inde indefenſ' Ideo conſideratum eſt quod præd. Willielmus Huſtler Richardus & Willielmus Osbaldeſton recuperent verſus præfat. Thomam Brooke debitum ſuum præd. & dampna ſua occaſione detention. debiti ill. ad octo libr. eiſdem Willielmo Huſtler Richardo & Willielmo Osbaldeſton ex aſſenſu ſuo per Cur. hic adjudicat' Et idem Thomas Brooke in Miſericordia &c.

Nil dicit.

Judgment.

Miſericordia.

Poſtea ſcilicet die Martis prox. poſt Octab. Sancti Hillarii iſto eodem termino coram Domina Regina apud Weſtm. ven. præd. Thomas Brooke per Thomam Harvey Attorn. ſuum & dicit quod in recordo & proceſſu præd. acetiam in redditione judicii præd. manifeſte eſt erratum in hoc videlicet quod narr. præd. in record. præd. mentionat. & ſuper qua judicium præd. in forma præd. reddit. exiſt. materiaque in eadem content. minus ſufficien. in lege exiſt. ad judic. ill. in forma præd. ſuperinde reddit. habend. ſeu manutenend' Et ſic judic. præd. ſuperinde in forma præd. reddit. erroneum & vacuum in lege exiſt. Ideoq; in eo manifeſt. eſt errat. Errat. eſt etiam in hoc quod ubi per record. præd. apparet quod judicium præd. in forma præd. reddit. reddit. fuit pro præfat. Willielmo Huſtler Mil. Richardo Osbaldeſton Mil. & Willielmo Osbaldeſton verſus ipſum Thomam Brooke ubi per legem terræ hujus Regni Angl. judicium in placito præd. reddi debuiſſet pro præfat. Thoma Brooke verſus ipſos Willielmum Huſtler Mil. Richardum Osbaldeſton Mil. & Willielmum Osbaldeſton Ideoq; in eo manifeſte eſt errat' Et pet quod judic. ill. ob. error. ill. & al. in record. & proceſſ. præd. exiſten. revocetur adnulletur & penitus pro nullo habeatur quodque idem Thomas Brooke ad omnia quæ occaſione judicii præd. amiſit reſtituatur Et quod præd. Willielmus Huſtler Mil. Richardus Osbaldeſton Mil. & Willielmus Osbaldeſton ad error. præd. rejungant &c. Et præd. Willielmus Huſtler Mil. Richardus Osbaldeſton Mil. & Willielmus Osbaldeſton per Adrian. Moor Attorn. ſuum ven. & ſtatim dic. quod nec in record. & proceſſ. præd. nec in redditione judicii præd. in ullo eſt erratum Et pet. quod Cur. dictæ Dominæ Reginæ nunc hic procedat ad examination. tam record. & proceſſ. præd. quam mater. præd. per ipſum Thomam Brooke ſuperius pro error. aſſign. quodque judic. præd. in omnibus affirmetur.

Errors aſſign'd.

Joinder in Errors.

Judicium affirmetur.

Placita

Placita coram Domino Rege & Domina Regina apud Weſtm. de termino Sanctæ Trinitatis Anno Regni Domini Willi. & Dominæ Mariæ nunc Regis & Reginæ Angliæ &c. tertio. Rotulo 166.

Barker *verſus* Winch. Vide fo. 56.

Berks, ff. SImo *Winch* nuper de Bray in Com. præd. Gen. attach. fuit ad reſpondendum Thomæ Barker Gen. de placito quare vi & armis ſex Meſuag. ſex Cottag. ſexagint. acr. terræ ſexagint. acr. prati treſcent. acr. paſtur. & quadragint. acr. boſci cum pertin. in Paroch. de Bray quæ Willielmus Yeildall & Rebecca Uxor ejus eidem Thomæ dimiſer. ad termin. qui nondum præteriit ac al. ſex Meſuagia ſex al. Cottagia ſexagint. al. acr. terræ ſexagint. al. acr. prati treſcent. al. acr. paſturæ & quadragint. al. acr. boſci cum pertin. in Paroch. de Bray præd. quæ Johannes Lidgold jun. eidem Thomæ Barker etiam dimiſit ad terminum qui nondum præteriit intravit & ipſum a firmis ſuis prædictis ejecit & alia enormia ei intulit ad grave dampnum ipſius Thomæ & contra pacem Domini Regis & Dominæ Reginæ nunc &c. Et unde idem Thomas Barker per Willielmum Turbill Attorn. ſuum queritur quod cum præd. Willielmus Yeildall & Rebecca Ux. ejus primo die Aprilis Anno Regni Domini Regis & Dominæ Reginæ nunc Angl' &c. tertio apud Paroch. de Bray dimiſiſſent eidem Thomæ præd. ſex Meſuagia ſex Cottag. ſexagint. acr. terræ ſexagint. acr. prati treſcent. acr. paſturæ & quadragint. acras boſci cum pertinentiis habendum & occupand. eadem tenementa cum pertin. eidem Thomæ Barker & aſſign. ſuis a viceſimo quinto die Martii tunc ult. præterito uſque plenum finem & terminum quinque annorum extunc prox. ſequen. plenar. complend. & finiend. virtute cujus quidem dimiſſion. idem Thomas Barker in eadem tenementa cum pertin. ult. ſupradict. intravit & fuit inde poſſeſſionat. Acetiam quod cum præd. Johannes Lidgold eodem primo die Aprilis Anno tertio ſupradict. apud Paroch. de Bray præd. dimiſiſſet eidem Thomæ Barker præd. ſex al. Meſuagia ſex al. Cottag. ſexaginta al. acr. terræ ſexagint. al. acr. prati treſcent. al. acr. paſtur. & quadragint. al. acr. boſci cum pertin. habend. & occupand. tenementa ill. cum pertin. eidem Thomæ & aſſign. ſuis a præd.

Ejectment in *B. R. per* Original upon two ſeveral Demiſes.

Declaration upon the firſt.

Second Demiſe.

præd. viceſimo quinto die Martii tunc ult. præterit. uſque plen. finem & terminum quinque annorum extunc prox. ſequen. & plenar. complend. & finiend. virtute cujus dimiſſion. idem Thomas in eadem tenementa cum pertin. ult. ſupradict. intravit & fuit inde poſſeſſionat' Et ſic inde poſſeſſionat. exiſten. & de præd. ſeparal. tenementis cum pertin. ut præfertur etiam poſſeſſionat. exiſten. præd. Simo Winch poſtea ſcilicet præd. primo die Aprilis Anno tertio ſupradicto vi & armis &c. in præd. tenementa cum pertin. quæ præd. Willielmus & Rebecca Uxor ejus eidem Thomæ Barker in forma præd. dimiſiſſent ad terminum præd. ſuperius primo ſpecificat. qui nondum præteriit &c in præd. tenementa cum pertin. quæ præd. Johannes Lidgold eidem Thomæ Barker in forma prædicta dimiſiſſet ad terminum præd. ſuperius ult. ſpecificat. qui nondum præteriit intravit Et ipſum Thomam Barker a firmis ſuis præd. ejecit & al. enormia &c. ad grave dampnum &c. Et contra pacem &c. Unde dicit quod deteriorat. eſt & dampnum habet ad valenciam Centum libr' Et inde producit ſectam &c.

Et præd. Simo Winch per Johannem Sandwell Attorn. ſuum ven. & dicit quod tenementa in narration. præd. ſuperius ſpecificat. ſunt & a tempore cujus contrar. memoria hominum non exiſtit fuer. parcell. Manerii de Bray in Com. præd. de quo quidem Manerio Dominus Rex & Domina Regina ſeiſit. ſunt in jure coron. Quodque Manerium præd. eſt de antiquo Dominico Coron. Domini Regis & Dominæ Reginæ Quodque præd. tenementa ſunt placitabil. & placitat. fuer. in Cur. Manerii præd. per parvum breve Domini Regis & Dominæ Reginæ de recto clauſo a tempore cujus contrar. memoria homin. non exiſtit Et hoc parat. eſt verificare prout Cur. conſideraverit &c. Unde pet. judic. ſi Cur. Domini Regis & Dominæ Reginæ hic placitum inde cogn. velit &c.

Pleads in Abatement, that the Lands are parcel of a Manor in ancient Demeſne.

And only impleadable in the Court of the Manor by Writ of Right cloſe.

Et præd. Thomas Barker dicit quod per aliqua per præd. Simonem Winch ſuperius placitando allegat. Cur. Domini Regis & Dominæ Reginæ hic a cognitione placiti præd. habend. præcludi non debet quia dicit quod placitum præd. per ipſum Simonem modo & forma præd. ſuperius placitat. materiaque in eodem content. minus ſufficientes in lege exiſtunt ad prædictam Curiam Domini Regis & Dominæ Reginæ nunc hic a cognition. placiti prædicti habend. præcludend. ad quod quidem placitum materiamque in eodem content. idem Thomas Barker neceſſe non habet nec per legem terræ tenetur aliquo modo reſpondere Et hoc parat. eſt verificare Unde pro defectu ſufficien. reſponſ. in hac parte idem Thomas pet. judic. & terminum ſuum præd. adhuc ventur. de & in tenementis præd. cum pertin. unacum dampnis ſuis occaſione tranſgreſſion. & ejection. firmæ præd. ſibi adjudicari &c. Et pro cauſis moration. in lege ſuper placito ill. idem Thomas juxta formam ſtatuti in hujuſmodi caſu inde nuper edit. & proviſ. oſtend. & Cur. hic demonſtrat has cauſas ſubſequen. videlicet eo quod præd. Simo in placito ſuo præd. non oſtend. Cur. hic nec allegavit quod tenementa præd.

Demurrer.

cum pertin. in narr. præd. mentionat. nec aliqua eorum parcell. tenentur de præd. Domino Rege & Domina Regina nunc de Manerio ſuo de Bray præd. Et quia placitum præd. eſt inſenſibil. incert. & caret forma

Joinder. Et præd. Simo dicit quod placitum præd. per ipſum Simonem modo & forma præd. ſuperius placitat. materiaque in eodem content. bon. & ſufficien. in lege exiſtunt ad prædictam Cur. dicti Domini Regis & Dominæ Reginæ nunc hic a cognition. placiti præd. habend. præcludend. quod quidem placitum materiamque in eodem content. ipſe idem Simo parat. eſt verificare & probare prout Cur' &c. Et quia præd. Thomas ad placitum ill. non reſpondit nec ill. hucuſq; aliqualit. dedic. ipſe idem Simo ut prius pet. judic. ſi Cur. dicti Domini Regis & Dominæ Reginæ

Continuances. nunc hic placitum præd. cogn. velit. aut debeat Sed quia Cur. dicti Domini Regis & Dominæ Reginæ nunc hic de judicio ſuo de & ſuper præmiſſ. reddend. nondum adviſatur. dies inde dat. eſt partibus prædictis coram Domino Rege & Domina Regina uſque a die Sanctæ Trinitatis in tres ſeptimanas ubicunque &c. de judicio ſuo inde audiend. eo quod Cur. dicti Domini Regis & Dominæ Reginæ nunc hic inde nondum &c. Ad quem diem coram Domino Rege & Domina Regina apud Weſtm. ven. partes præd. per Attorn. ſuos præd. Sed quia Cur. dicti Domini Regis & Dominæ Reginæ nunc hic de judicio ſuo de & ſuper præmiſſis reddend. nondum adviſatur dies inde dat. eſt partibus præd. coram Domino Rege & Domina Regina in craſtinum animarum ubicunque &c. de judicio ſuo inde audiend. eo quod Cur. dicti Domini Regis & Dominæ Reginæ nunc hic inde nondum &c. Ad quem diem coram Domino Rege & Domina Regina apud Weſtm. ven. partes præd. per Attorn. ſuos præd. Super quo viſ. & per Cur. dictorum Domini Regis & Dominæ Reginæ nunc hic plenius intellectis omnibus & ſingulis præmiſſis maturaque deliberatione inde habita pro eo quod videtur Cur. dicti Domini Regis & Dominæ Reginæ nunc hic quod præd. placitum per præd. Simonem modo & forma præd. ſuperius placitat. materiaque in eodem content. minus ſufficien. in lege exiſtunt ad præd. Cur. dicti Domini Regis & Dominæ Reginæ nunc hic a cognitione placiti præd. habend. præcludend. dictum eſt per

Judgment *quod reſpondeat Ouſter.* Cur. præfat. Simoni quod ulterius reſpondeat ad narr. præd. Et ſuper hoc præd. Simo ſolempnit. exact. per præd. Johannem Sandwell Attorn. ſuum ven. & defend. vim & injur. quando &c. Et

Non cul. pleaded. dicit quod ipſe idem Simo in nullo eſt culpabil. de tranſgr. & ejection. præd. prout præd. Thomas ſuperius verſus eum queritur. Et de hoc pon. ſe ſuper patriam Et præd. Thomas ſimiliter &c.

Awarding *Venire* upon a Trial at bar, and continuance over *pro defectu Jur'.* Ideo præcept. eſt vic. quod venire fac. coram Domino Rege & Domina Regina in Octab. Purification. beatæ Mariæ ubicunque &c. duodecim &c. per quos &c. Et qui nec &c. ad recogn' &c. quia tam &c. Idem dies dat. eſt partibus præd. &c. De quo die jurat. præd. inter partes præd. de placito præd. poſit. fuit inde inter eos

in reſpectum coram Domino Rege & Domina Regina uſque a die Paſchæ in unum menſem extunc prox. ſequen. ubicunque &c. pro defectu jur' &c. Ad quem diem coram Domino Rege & Domina Regina apud Weſtm. ven. partes præd. per Attorn. ſuos præd. Et jur. juratæ ill. exact. ſimiliter vener. qui ad veritat. de præmiſſis dicend. electi triat. & jurat. fuer. Et quoad tranſgreſſion. & ejection. præd. de & in præd. ſex Meſuag. ſex Cottag. ſexagint. acr. terræ ſexagint. acr. prati treſcent. acr. paſtur. & quadragint. acr. boſci cum pertin. in narration. præd. per præd. Willielmum Yeildall & Rebeccam Uxorem ejus præfat. Thomæ Barker ut præfertur dimiſſ. dicunt ſuper ſacramentum ſuum quoad unam quartam partem de trigint. & duabus acr. terræ inde cum pertin. tent. de Manerio de Lords Lands & exiſten. in tenur. cujuſdem Willielmi Whitehand quod præd. Simo Winch eſt culpabil. de tranſgreſſion. & ejectione præd. prout præd. Thomas ſuperius verſus eum queritur Et quoad reſid. præd. ſex Meſuag. ſex Cottag. ſexagint. acr. terræ ſexagint. acr. prati treſcent. acr. paſturæ & quadragint. acr. boſci cum pertin. per præd. Willielmum Yeildall & Rebeccam præfat. Thomæ ut præfertur dimiſſ. iidem juratores ſuper ſacramentum ſuum præd. dicunt quod præd. Simo non eſt culpabil. de tranſgr. & ejectione præd. prout præd. Simo ſuperius placitando allegavit Et quoad tranſgr. & ejection. præd. de & in præd. ſex al. Meſuag. ſex al. Cottag. ſexagint. al. acr. terræ ſexagint. al. acr. prati treſcent. al. acr. paſturæ quadragint. al. acr. boſci cum pertin. in narratione prædict. per prædict. Johannem Lidgold jun. præfat. Thomæ Barker ut præfertur dimiſſ. iidem jurat. dicunt ſuper ſacramentum ſuum præd. quoad unam quartam partem de trigint. & duabus acr. terræ tent. de Manerio de Lord Lands & exiſten. in tenur. præd. Willielmi Whitehand quod præd. Simo Winch eſt culpabil. de tranſgreſſion. & ejection. præd. prout præd. Thomas ſuperius verſus eum queritur Et aſſidunt dampna ipſius Thomæ occaſione præmiſſ. præd. ultra miſ. & cuſtag. ſua per ipſum circa ſectam ſuam in hac parte appoſit. ad vigint. ſolid' Et pro miſis & cuſtagiis ill. ad trigint. ſolid' Et quoad reſid. præd. ſex al. Meſuag. ſex al. Cottag. ſexagint. al. acr. terræ ſexagint. al. acr. prati treſcent. al. acr. paſtur. & quadragint. al. acr. boſci cum pertin. in narratione præd. per prædictum Johannem Lidgold ut præfertur dimiſſ. iidem juratores ſuper ſacramentum ſuum prædictum ulterius dicunt quod præd. Simo Winch non eſt culpabil. de tranſgr. & ejection. præd. prout præd. Simo ſuperius placitando allegavit Ideo conſideratum eſt quod præd. Thomas Barker recuperet verſus præd. Simonem Winch terminum ſuum prædictum adhuc ventur. de & in prædicta quarta parte præd. trigint. duarum acrarum terræ cum pertin. tent. de Manerio de Lords Lands & exiſten. in tenur. præd. Willielmi Whitehand parcell. præd. ſex Meſuag. ſex Cottag. ſexagint. acr. terræ ſexagint. acr. prati treſcent. acr. paſturæ & quadragint. acr. boſci cum pertin. per prædictum Willielmum Yeildall & Rebeccam

Verdict as to the firſt Demiſe.

As to part for the Plaintiff, and Not guilty as to other Part.

And as to the ſecond Demiſe, find as to part for the Plaintiff and part for the Defendant.

Judgment *quoad* what Defendant is found guilty.

beccam Ux. ejus præfat. Thomæ Barker ut præfertur dimiſſ. unde per jur. præd. ſuperius compert. exiſt. prædictum Simonem fore culpabil. de tranſgr. & ejection. præd. & præd. al. terminum ſuum adhuc ventur. de & in præd. al quarta parte præd. trigint. & duarum acrarum terræ cum pertin. tent. de Manerio de Lords Lands præd. in tenura præd. Willielmi Whitehand parcell. præd. ſex al. Meſuag. ſex al. Cottag. ſexaginta al. acr. terræ ſexaginta al. acr. prati treſcent. al. acr. paſtur. & quadragint. al. acr. boſci cum pertin. per prædictum Johannem Lidgold jun. præfat. Thomæ Barker ut præfertur dimiſſ. unde per jur. præd. ſuperius ſimiliter compert. exiſt. prædictum Simonem fore culpabil. de tranſgr. & ejection. præd. & dampna ſua præd. per jur. præd. in forma præd. aſſeſſ. necnon nonagint. & novem libr. pro miſis & cuſtag. ſuis præd. eidem Thomæ Barker per Cur. dicti Domini Regis & Dominæ Reginæ nunc hic ex aſſenſu ſuo de incremento adjudicat. quæ quidem dampna in toto ſe attingunt ad centum & un. libr' Et præd. Simo Winch capiatur &c. Et ſimiliter præd. Thomas Barker in miſericordia pro falſo clamore ſuo verſus prædictum Simonem Winch pro reſid. tranſgr. & ejection. præd' Unde præd. Simo per jur. præd. in forma præd. acquietat. exiſt. & præd. Simo eat inde ſine die &c.

Capiatur.

Quiet. & eat ſine die quoad reſid'.

Placita coram Domino Rege apud Weſtm. de termino Sanctæ Trinitatis Anno Regni Domini Jacobi ſecundi nunc Regis Angliæ &c. tertio. Rotulo 1019.

Counteſs of Plymouth *verſus* Throgmorton & Ux'.

Vide fo. 65.

Writ of Error.

DOMINUS REX mandavit dilecto & fideli ſuo Edvardo Herbert Militi Capital. Juſtic. ſuo de Banco breve ſuum clauſum in hæc verba ſſ. Jacobus ſecundus Dei Gratia Angliæ Scotiæ Franciæ & Hiberniæ Rex Fidei Defenſor &c. Dilecto & fidel. ſuo Edvardo Herbert Mil. Capital. Juſtic. ſuo de Banco ſalutem Quia in recordo & proceſſu

acetiam in redditione judicii loquelæ quæ fuit in Cur. noſtra coram vobis & ſociis veſtris Juſtic. noſtris de Banco per breve noſtrum inter Thomam Throckmorton Ar. & Dorotheam Ux. ejus Executricem teſtamenti Edvardi Pick Mil. & Brigittam Comitiſſam Dotiſſam Plymouth Executricem Teſtamenti Caroli Comitis Plymouth de eo quod eadem Brigetta Comitiſſa Dotiſſa Plymouth redderet præfat. Thomæ & Dorotheæ ſeptuaginta quinque libras ut dicitur Error intervenit manifeſtus ad grave dampnum ipſius Brigittæ Comitiſſæ Dotiſſæ Plymouth ſicut ex querela ſua accepimus Nos Error. ſi quis fuerit modo debito corrigi & partibus præd. plenam & celerem juſtitiam fieri volentes in hac parte vobis mandamus quod ſi judicium inde reddit. ſit tunc record. & proceſſ. præd. cum omnibus ea tangen. nobis ſub ſigillo veſtro diſtincte & aperte mittatis & hoc breve ita quod ea habeamus a die Sanctæ Trinitatis in tres ſeptimanas ubicunque tunc fuerimus in Anglia ut inſpect. record. & proceſſ. præd. ulterius inde pro error. illo corrigend. fieri faciamus quod de jure & ſecundum legem & conſuetud. Regni noſtri Angl. fuerit faciend. Teſte me ipſo apud Weſtm. octavo die Junii Anno Regni noſtri tertio

Santhey.

Reſponſ. Edvardi Herbert Mil. Capital. Juſtic. infranominat. Record. & proceſſ. loquelæ unde infra fit mentio cum omnibus ea tangen. coram Domino Rege ubicunque &c. Ad diem infracontent. mitto in quodam recordo huic brevi annex. prout interius mihi præcipitur

Edw. Herbert.

Placita apud Weſtm. coram Edvardo Herbert Mil. & ſociis ſuis Juſtic. Domini Regis de banco de termino Paſchæ Anno Regni Domini Jacobi ſecundi Dei Gratia Angliæ Scotiæ Franciæ & Hiberniæ Regis Fidei Defenſoris &c. tertio Rotulo 616.

Middleſex ſſ. Brigitta Comitiſſa Dotiſſa Plymouth Executrix teſtamenti & ult. voluntat. Caroli Comitis Plymouth ſum. fuit ad reſpondend. Thomæ Throckmorton Ar. & Dorotheæ Uxori ejus Executrici teſtamenti & ult. voluntat. Edvardi Picke Mil. de placito quod reddat eis ſeptuagint. & quinque libras quas eis injuſte detinet &c. Et unde iidem Thomas & Dorothæa per Carolum Draper Attorn. ſuum dicunt quod cum prædictus Comes in vita ſua ſcilicet tertio die Maii Anno Regni Domini Caroli ſecundi nuper Regis Angliæ &c. triceſimo ſecundo apud Iſlington per quoddam factum ſuum quod iidem Thomas & Dorothæa hic in Cur. proferunt cujus dat. eſt eiſdem die & anno dedit authoritatem eidem Edvardo requirere & recipere omnes & omnimod. denar. ſummam & ſummas quæ tunc fuer. vel in futuro ad aliquod tempus vel tempora infra tres annos tunc prox. ſequen. deven. debit.

Declaration upon a Warrant of Attorney to the Teſtator, by an Executrix and her Husband.

& ſolubil. eidem Comit. ſuper aliqua compota quæcunque & ſolvere & diſponere eaſdem ut ipſe prædictus Comes de tempore in tempus ordinaret vel appunctuaret eidem Edvardo per aliquod ſcriptum vel ſcripta ſub manu ſua duran. prædictis tribus annis Et pro cura & labore prædicti Edvardi in præmiſſis præd. Comes obligavit ſe per idem ſcriptum ſolvere præfat. Edvardo centum libras per annum legalis monetæ Angliæ duran. præd. tribus annis aut aliter quod licit. foret præd. Edvardo Picke retinere & ſolvere ſibi ipſi præd. centum libras per ann. duran. præd. tribus annis ex talibus pecuniis qual. ipſe reciperet virtute ejuſdem facti prout per idem factum plenius apparet Et præd. Thomas & Dorothæa in facto dicunt quod prædictus Edvardus poſtea & per ſpacium trium quarteriorum anni extunc prox. ſequen. apud Iſlington præd. de tempore in tempus ſolicitavit & requiſivit diverſas perſonas adtunc debitores præfat. Comitis ad ſolvend. multas denariorum ſummas adtunc ab eiſdem debit. & ſolubil. eidem Comiti Sed duran. præd. tribus quarter. anni vel ad aliquod tempus poſtea præd. Edvardus non recepit aliquas denariorum ſummas virtut. ejuſdem facti unde ſe ſolviſſe potuit præd. centum libras aut aliquam partem inde per quod actio accrevit eidem Edvardo in vita ſua ad exigend. & habend. de præfat. Comit. præd. ſeptuaginta & quinque libras præd. tamen Comes in vita ſua & præd Comitiſſa poſt ipſius Comitis mortem licet ſæpius requiſit. præd. ſeptuagint. & quinque libras eidem Edvardo in vita ſua ſeu præfat. Dorotheæ poſt ipſius Edvardi mortem dum ipſa ſola fuit ſeu præfat. Thomæ & Dorotheæ poſt deſponſalia inter eos celebrat. ſeu eorum alicui nondum ſolver. nec eorum alter ſolvit Sed ill. eidem Edvardo in vita ſua & præfat. Dorotheæ poſt ipſius Edvardi mortem & eiſdem Thomæ & Dorotheæ poſt deſponſalia inter eos celebrata reddere omnino contradixer. eademque Comitiſſa ill. eiſdem Thomæ & Dorotheæ adhuc reddere contradic. & injuſte detinet in retardation. fidel. execution. teſtamenti prædict. Edvardi præd. & ad dampnum ipſorum Thomæ & Dorotheæ decem librarum Et inde producunt ſectam &c. Et proferunt hic in Cur. iidem Thomas & Dorothæa literas teſtamentar. præd. Edvardi per quas ſatis liquet Cur. hic ipſam Dorotheam fore Executricem teſtamenti præfat. Edvardi & inde habere adminiſtration' &c.

Sallery of 100 *l. per Annum* allow'd to the Attorney, to be deducted out of what he receives.

The Attorney demands ſeveral Sums of Money, but none paid.

Whereby the Action accrued.

Breach.

Profert of the Letters teſtamentary.

Et prædicta Brigetta per Willielmum Rymer Attorn. ſuum ven. & defend. vim & injur. quando &c. Et nichil in barram ſive præcluſionem actionis prædictorum Thomæ & Dorotheeæ præd. dicit quod iidem Thomas & Dorothea reman. verſus præfat. Brigittam inde indefens' Ideo conſ. eſt quod præd. Thomas & Dorothea recuperent verſus præfat. Brigettam debitum ſuum præd. & dampna ſua occaſione detentionis debiti illius ad quinquaginta ſolid. eiſdem Thomæ & Dorotheæ ex aſſenſu ſuo per Cur. hic adjudicat. de bonis & catallis que fuer. præd. Comitis tempore mortis ſuæ in manibus ipſius Brigittæ adminiſtrand. exiſten. levand. ſi tantum in

Judgment *per Nil dicit.*

manibus ſuis adminiſtrand. habeat & ſi non habeat tunc dampna prædicta de bonis & catallis præd. Brigettæ propr. levand' Et prædicta Brigetta Comitiſſa Plymouth in Miſericordia &c. *Miſericordia.*

Et prædicta Brigetta Comitiſſa Dotiſſa Plymouth per Henricum Doughty Attorn. ſuum ven. & dic. quod in record. & proceſſu præd. necnon in redditione judicii præd. manifeſt. eſt errat. in hoc videlicet quod narratio præd. materiaque in eadem content. minus ſufficien. in lege exiſt. ad actionem præfat. Thomæ & Dorotheæ inde verſus ipſam Comitiſſam habend. manutenend' Ideo in eo errat. eſt manifeſt. Errat. eſt etiam in hoc quod per record. præd. apparet quod judicium præd. modo & forma præd. reddit. reddit. fuit pro præd. Thoma & Dorothæa verſus ipſam Comitiſſam in placito præd. ubi per legem terræ hujus Regni Angl. judic. illud. reddi debuiſſet pro eadem Comitiſſa verſus præfat. Thomam & Dorotheam ideoque in eo ſimiliter errat. eſt manifeſt. Et præd. Comitiſſa ulterius dicit quod errat. eſt etiam in hoc videlicet quod non habetur aliquod Warrant. de Attorn. affilat. de record. in præd. Cur. de Communi Banco inter partes præd. de placito præd. ad Warrantizand. Carolum Draper fore Attorn. pro præd. Thoma & Dorothæa verſus præd. Comitiſſam in placito præd' Ideo in eo ſimiliter errat. eſt manifeſte Unde eadem Comitiſſa pet. breve Domini Regis de Certiorari Capitali Juſtic. dicti Domini Regis de Banco dirigend' &c. Et ei conceditur &c. per quod præcept. eſt Edvardo Herbert Mil. Capital. Juſtic. de Banco præd. quod ſcrutat. rotulis & al. memorand. de Warr. Attorn. Com. Middleſex de termino Paſchæ Anno Regni dicti Domini Regis tertio in cuſtod. ſua de record. exiſten. & quid inde in eiſdem invenerit dicto Domino Regi ubicunque &c. ſine dilatione certificet una cum brevi dicti Domini Regis ſibi inde direct' &c. Qui quidem Capital. Juſtic. de Banco præd. dicti Dom. Reg. reſpondit quod executio brevis præd. patebat in quadam Schedula eidem brevi annex. in qua quidem Schedula continentur titulus Rotulorum de Warrant. Attorn. affilat. de præd. termino Paſchæ in brevi præd. ſpecificat. in cuſtod. ipſius Capital. Juſtic. de record. exiſten. & recordum cujuſdam Warrant. Attorn. inter partes præd. de præd. placito in eadem forma qua idem Warrant. Attorn. in eiſdem Rotul. de recordo intrat. exiſtit quæ quidem titulus & warrant. Attorn. ſequuntur in hæc verba Rotula de Attorn. recept. coram Edvardo Herbert Mil. Capital. Juſtic. Domini Regis de Banco & ſociis ſuis de termino Paſchæ Anno Regni Domini Jacobi ſecundi Dei Gratia Angliæ Scotiæ Franciæ & Hiberniæ Regis Fidei Defenſoris &c. tertio

Errors aſſign'd.

No Warrant of Attorney, and *Certiorari* pray'd.

Entry of the *Certiorari.*

Return of the Chief Juſtice.

Middleſex ſſ. Thomas Throckmorton Ar. & Dorothæa Ux. ejus Executrix teſtamenti & ult. voluntat. Edvardi Picke Mil. pon. loco ſuo Carolum Draper Attorn. ſuum verſus Brigittam Comitiſſam Dotiſſam Plymouth Executricem teſtamenti & ult. voluntat. Caroli Comitis Plymouth de placito debiti Quod quidem breve inter

Warrant of Attorney.

inter record. ſine die affilatur &c. Et ſuper hoc prædict. Thomas & Dorothæa per Michaelem Johnſon Attorn. ſuum gratis hic in Cur. ven. & prædict. Brigitta Comitiſſa Dotiſſa Plymouth ut prius dicit quod in record. & proceſſ. necnon in redditione judicii præd. manifeſte eſt errat. allegando errores prædict. per ipſam in forma præd. allegat. & pet. quod judicium prædict. ob errores ill. & al. in record. & proceſſ. prædict. exiſten. revocetur adnulletur & penitus pro nullo habeatur Et quod ipſa ad omnia quæ occaſione judicii præd. amiſit reſtituatur &c. Et quod præd. Thomas & Dorothæa ad error. prædict. rejungant &c. Et quod Cur. dicti Domini Regis hic procedat ad examination. tam record. & proceſſ. præd. quam materiar. præd. ſuperius pro error. aſſign' &c. Et præd. Thomas & Dorothæa dicunt quod nec in record. & proceſſ. præd. nec in redditione judicii præd. in ullo eſt errat. Et pet. ſimiliter quod Cur. dicti Domini Regis procedat ad examination. tam record. & proceſſ. præd. quam materiar. præd. ſuperius pro error. aſſign. & quod judicium præd. in omnibus affirmetur &c. Et quia Cur. dicti Domini Regis nunc hic de judicio inde reddend. nondum adviſatur dies inde dat. eſt partibus præd. coram dicto Domino Rege uſque a die Sancti Michaelis in tres ſeptimanas tunc prox. ſequen. ubicunque &c. de judicio ſuo inde audiend. eo quod Cur. dict Domini Regis hic inde nondum &c. Ad quem diem coram Domino Rege apud Weſtm. ven. partes præd. per Attorn. ſuos præd' Sed quia Cur. dicti Domini Regis nunc hic de judicio ſuo de & ſuper præmiſſ. præd. reddend. nondum adviſatur dies inde dat. eſt partibus prædict. coram Domino Rege uſque in Octab. Sancti Hillarii ubicunque &c. de judicio ſuo inde audiend. eo quod Cur. dicti Domini Regis nunc hic inde nondum &c. Ad quem diem coram Domino Rege apud Weſtm. ven. partes præd. per Attorn. ſuos præd' Sed quia Cur. dicti Domini Regis nunc hic de judicio ſuo de & ſuper præmiſſ. reddend. nondum adviſatur dies inde dat. eſt partibus præd. coram Domino Rege uſque in quinden. Paſchæ ubicunque &c. de judicio ſuo inde audiend. eo quod Cur. dicti Domini Regis hic inde nondum &c. Ad quem diem coram Domino Rege apud Weſtm. ven. partes prædict. per Attorn. ſuos præd. ſuper quo viſ. & per Cur. dicti Domini Regis hic plenius intellectis diligenterq; examinat. tam record. & proceſſ. præd. ac judicium ſuper eiſdem reddit. quam præd. cauſis & materiis ſuperius pro error. aſſign. pro eo quod videtur Cur. dicti Domini Regis nunc hic quod in record. & proceſſ. necnon in redditione judicii præd. manifeſt. eſt errat' Conſ. eſt quod judicium præd. ob error. præd. & al. in record. & proceſſ. præd. exiſten. revocetur adnulletur & penitus pro nullo habeatur Et quod præd. Brigetta Comitiſſa Dotiſſa Plymouth ad omnia quæ occaſione judicii præd. amiſit reſtituatur &c.

Defendants rejoin in Error.

Continuance.

Judgment reverſed.

Placita

Placita coram Domino Rege apud Weſtm. de termino Paſchæ Anno Regni Domini Willielmi tertii nunc Regis Angliæ &c. octavo. Rotulo 291.

Freeman & al. *verſus* Bernard & al'. Vide fo. 69.

London, ff. MEmorandum, Quod als. ſcilicet termino Sancti Hillarii Anno Regni Domini Willi. tertii nunc Regis Angl' &c. ſexto coram eodem Domino Rege apud Weſtm. ven. Thomas Freeman & Thomas Haggar per Benjamin Mould Attorn. ſuum Et protuler. in Cur. dicti Domini Regis tunc ibidem quandam billam ſuam verſus Samuel Bernard & Thomam Rodbard in Cuſtod. Mar' &c. de placito tranſgr. ſuper caſum &c. Et ſunt pleg. de proſequend. ſcilicet Johannes Doe & Richardus Roe Quæ quidem billa ſequitur in hæc verba ff. London ff. Thomas Freeman & Thomas Haggar queruntur de Samuele Bernard & Thoma Rodbard in Cuſtod. Mar. Mareſc. Domini Regis coram ipſo Rege exiſten. pro eo videlicet quod cum octavo die Auguſti Anno Domini Milleſimo ſexcenteſimo nonageſimo tertio apud London præd. videlicet in Paroch. beatæ Mariæ de Arcubus in Warda de Cheape agreat. fuit inter ipſos Thomam Freeman & Thomam Haggar & præfat. Samuel. & Thomam Rodbard modo & forma ſequen. videlicet quod prædict. Samuel Bernard & Thomas Rodbard deliberarent præfat. Thomæ Freeman & Thomæ Haggar ſexdecim baggas bon. novorum lupulorum de tunc prox. provention. Anglice *next Growth*, bon. mercimon. pandoxatorum, Anglice *Good Brewers Ware*, ad trigint. & quatuor. ſolid. per centum & quod deliberat. forent. ad vel ante viceſimum quintum diem Decembr. tunc prox. ſequen. Ac ſuperinde in conſ. quod præd. Thomas Freeman & Thomas Haggar ſolviſſent præd. Samuel. & Thomæ Rodbard un. peciam auri cuneat. vocat. *a Guinea*, legalis monetæ Angl. in parte ſolution. inde ac adtunc & ibidem ad ſpecial. inſtanc. & requiſition. ipſorum Samuel. & Thomæ Rodbard ſuper ſe aſſumpſiſſent & eiſdem Samuel. & Thomæ Rodbard fidelit. promiſiſſent ad performand. agreeament. præd. in omnibus ex parte ipſorum Thomæ Freeman & Thomæ Haggar performand. ſeu perimplend. ſecundum formam & effectum agreament. præd. ipſi iidem Samuel & Thomas Rodbard ſuper ſe aſſumſer. & præfat. Thomæ Freeman & Thomæ Haggar adtunc & ibidem

Declaration upon an Agreement to deliver ſixteen Bags of Hops, before *Decemb.* 25.

Mutual Promiſes to perform the Agreement.

dem fidelit. promiſer. quod ipſi iidem Samuel & Thomas Rodbard agreament. præd. in omnibus ex parte ipſorum Samuel. & Thomæ Rodbard performand. ſeu perimplend. bene & fidelit. performare & perimplere vellent præd. tamen Samuel & Thomas Rodbard promiſſion. & aſſumption. ſuas prædict. minime curan. ſed machinan. & fraudulent. intenden. eoſdem Thomam Freeman & Thomam Haggar in hac parte callide & ſubdole decipere & defraudare præd. ſexdecim baggas lupulorum ſeu aliquam inde parcell. ſuper vel ante præd. viceſimum quintum diem Decembris prox. ſequen. poſt confection. agreament. præd. ſeu ad aliquod tempus poſtea hucuſq; eiſdem Thomæ Freeman & Thomæ Haggar ſeu eor. alteri non deliberaver. Sed ill. eis hucuſq; deliberare omnino recuſaver. & adhuc recuſant Cumque etiam poſtea ſcilicet præd. octavo die Auguſti Anno Domini ſupradict. apud London præd. in Paroch. & Warda præd quoddam al. agreament. habit. & fact. fuit in ſcriptis inter præd. Samuel. & Thomam Rodbard & eoſdem Thomam Freeman & Thomam Haggar in forma ſequen. videlicet quod præd. Samuel & Thomas Rodbard deliberarent eiſdem Thomæ Freeman & Thomæ Haggar ſexdecim al. baggas bon. novorum lupulorum de tunc prox. provention. Anglice *next Growth*, bon. mercimon. pandoxatorum, Anglice *good Brewers Ware*, ad ratam trigint. & quatuor. ſolidorum per centum, Anglice *at thirty-four Shillings* per *Hundred*, & quod deliberat. forent ſuper vel ante viceſimum quintum diem Decembr. tunc prox. ſequen. quod quidem ſcript. agreament. relict. fuit in manibus cujuſdam Thomæ Ruck Cumque poſtea ſcilicet eodem octavo die Auguſti Anno ſupradicto apud London præd. in Paroch. & Warda præd. quoddam colloquium habit. & mot. fuit inter præd. Samuel. & Thomam Rodbard & eoſdem Thomam Freeman & Thomam Haggar de & concernen. agreament. præd. ult. mentionat. & de & concernen. deliberation. duorum onerum lupulorum eiſdem Thomæ Freeman & Thomæ Haggar per præd. Samuel. & Thomam Rodbard fiend. & ſuper colloquium ill. inter præfat. Samuel. & Thomam Rodbard & eoſdem Thomam Freeman & Thomam Haggar duo al. onera lupulorum ſecundum agreament. præd. ut præfertur relict. in manibus præd. Thomæ Ruck quodque ipſi iidem Thomas Freeman & Thomas Haggar acceptarent lupulos præd. ult. mentionat. ſecundum præd. prius agreament. ult. recitat. ac ſuperinde in conſ. quod ipſi iidem Thomas Freeman & Thomas Haggar adtunc & ibidem ad ſpecial. inſtanc. & requiſition. præd. Samuel. & Thomæ Rodbard ſolviſſent præd. Samuel. & Thomæ Rodbard un. al. peciam auri cuneat. vocat. *a Guinea* legalis monetæ Angl. in parte ſolution. pro eiſdem lupulis ult. mentionat. ac ſuper ſe aſſumpſiſſent & eiſdem Samuel. & Thomæ Rodbard fideliter promiſiſſent ad agreament. præd. in omnibus ex parte ipſorum Thomæ Freeman & Thomæ Haggar performand. & perimplend. ſecundum formam & effectum agreament. præd. ult. mentionat. ipſi iidem Samuel & Thomas Rodbard ſuper ſe aſſumpſer. &

Breach in not delivering the Hops.

Second Count upon another Agreement in Writing ſet forth, to deliver other ſixteen Bags of Hops, and left in the Hands of a third Perſon.

A *Colloquium* touching the Agreement.

Mutual Promiſes.

eiſdem Thomæ Freeman & Thomæ Haggar adtunc & ibidem fidelit. promiſer. quod ipſi iidem Samuel & Thomas Rodbard agreament. præd. ult. mentionat. in omnibus ex parte ipſorum Samuel. & Thomæ Rodbard performand. & perimplend. bene & fidelit. performare & perimplere vellent Prædict. tamen Samuel & Thomas Rodbard promiſſion. & aſſumption. ſuas præd. ult. mentionat. in forma præd. fact. minime curantes ſed machinantes & fraudulent. intendentes eoſdem Thomam Freeman & Thomam Haggar in hac parte callide & ſubdole decipere & defraudare præd. duo onera lupulorum ult. mentionat. ſeu aliquam inde parcellam eiſdem Thomæ Freeman & Thomæ Haggar ſuper vel ante præd. viceſimum quintum diem Decembris prox. ſequen. poſt confection. promiſſion. & aſſumption. prædict. ult. mentionat. ſeu ad aliquod tempus poſtea eiſdem Thomæ Freeman & Thomæ Haggar ſeu eorum alteri non deliberaver. ſeu eorum alt. deliberavit Sed ill. eis hucuſque deliberare omnino recuſaver. & adhuc recuſant Unde iidem Thomas Freeman & Thomas Haggar dicunt quod ipſi deteriorat. ſunt & dampnum habent ad valenc. ducent. librarum Et inde producunt ſectam &c. Breach

Et modo ad hunc diem ſcilicet diem Mercur. prox. poſt Quinden. Paſchæ uſque quem diem præd. Samuel & Thomas Rodbard habuer. licenc. ad billam præd. interloquend. & tunc ad reſpondend. &c. coram Domino Rege apud Weſtm. ven. tam præd. Thomas Freeman & Thomas Haggar per Attorn. ſuum præd. quam præd. Samuel & Thomas Rodbard per Johannem Bernard Attorn. ſuum Et iidem Samuel & Thomas Rodbard defend. vim & injur. quando &c. Et dicunt quod præd. Thomas Freeman & Thomas Haggar action. ſuam præd. inde verſus eos habere ſeu manutenere non debent quia dicunt quod poſt confection. ſeparal. promiſſion. & aſſumption. ſuperius in narr. præd. ſpecificat. ſcilicet ſecundo die Novembris Anno Domini Milleſimo ſexcenteſimo nonageſimo quarto apud London præd. ſcilicet apud Paroch. beatæ Mariæ de Arcubus in Warda de Cheape præd. tam præfat. Thomas Freeman & Thomas Haggar quam præd. Samuel & Thomas Rodbard ſubmiſer. & poſuer. ſeipſos in arbitrium ordination. & judicium Johannis Parſons Mil. & Richardi Hammond Pandoxator. Arbitratorum tam ex parte præd. Thomæ Freeman & Thomæ Haggar quam ex parte eorum Samuel. & Thomæ Rodbard indifferent. nominat. & elect. ad arbitrand. ordinand. adjudicand. & determinand. de & ſuper & concernen. omnes & omnimodas action. & actiones cauſam & cauſas actionis ſectas debita obligationes billas ſpecialitat. executiones computa ſummam & ſummas monetæ differentias controverſias tranſgr. dampna clamea & demand. quæcunq; ad aliquod tempus ante tunc habit. mot. commenſat. proſecut. fact. promiſſ. commiſſ. vel dependen. in ſecta controverſia queſtione ſive demand. per vel inter præfat. Thomam Freeman & Thomam Haggar & præd. Samuel. & Thomam Rodbard pro vel ratione alicujus Plead a Submiſſion to Arbitration.

To be made in writing before the 1ſt of *December.*

cujus materiæ cauſæ ſive rei cujuſcunque ita quod præd. arbitratores facerent & darent arbitrium & determination. ſuam de & concernen. præmiſſ. in ſcripto indentat. ſub manibus & ſigillis ſuis parat. deliberari præd. Thomæ Freeman & Thomæ Haggar Samuel. & Thomæ Rodbard ſive alteri vel eorum aliquibus apud vel in domum manſionalem Tobiæ Winne Scriptor. in platea vocat. *Bartholomew-Lane*, prope Regale Excambium Lond. ante primum diem Decembris tunc prox. ſequen' Quodque poſtea ſcilicet viceſimo nono die Novembris Anno Domini Milleſimo ſexcenteſimo nonageſimo quarto ſupradicto apud domum manſional. præfat. Tobiæ Winne in platea vocat. *Bartholomew-Lane*, præd. prope Regale Excambium in London ſcilicet in Paroch. Sancti Bartholomæi Exchange in Warda de Broad-ſtreet London præfat. Johannes Parſons & Richardus Hamond arbitrator. præd. accept. ſuper ſe onere arbitrii præd. per quoddam ſcript. indentat. ſub manibus & ſigillis arbitratorum illorum ac parat. ad deliberand. præd. Thomæ Freeman & Thomæ Haggar Samuel. & Thomæ Rodbard ſive alteri vel aliquibus eorum arbitraver. fecer. & deder. arbitrium & determination. ſuam de & concernen. præmiſſ. quod præd. Samuel & Thomas Rodbard acetiam prædict. Thomas Freeman & Thomas Haggar ſive ſeparal. reſpective Executor. & Adminiſtrator. præd. Samuel. & Thomæ Rodbard Thomæ Freeman & Thomæ Haggar viciſſim ſignarent ac ſigillarent ac ut actum & factum ſua deliberarent ad & pro uſu alterius & alterorum Executor. ſive Adminiſtrator. ſuorum reſpective plenas & ſufficientes general. relaxation. & exoneration. de omnibus actionibus ſectis compot. debitis & demand. quibuſcunque in Lege ſive Equitate de & ſive concernen. præmiſſ. dictis arbitrator. ut præfertur ſubmiſſ. in aliquo modo Ac præd. Samuel & Thomas Rodbard dicunt quod ipſi a tempore confection. arbitrii illius hucuſque ſemper parat. fuer. & exiſtunt ſignare ſigillare ac ut acta & facta ſua eiſdem Thomæ Freeman & Thomæ Haggar deliberare tal. relaxationes & exonerationes qual. per arbitratores præd. ſuperius arbitrantur ſi præd. Thomas Freeman & Thomas Haggar relaxation. & exoneration. ill. de præfat. Samuel. & Thoma Rodbard accipere vellent ſive voluerint Et hoc parat. ſunt verificare Unde iidem Samuel & Thomas Rodbard petunt judicium ſi præd. Thomas Freeman & Thomas Haggar action. ſuam præd. inde verſus eos habere ſeu manutenere debeant &c.

Arbitrators make Award.

To this the Plaintiffs demurr'd, and the Defendants join'd in Demurrer.

Placita coram Domino Rege & Domina Regina apud Weſtm. de termino Sanctæ Trinitatis Anno Regni Domini Willielmi tertii nunc Regis Angl' &c. Septimo. Rotulo 176.

Bacon *verſus* Debary. Vide fo. 70.

London, ſſ. *Memorandum*, Quod als. ſcilicet termino Paſchæ ult. præterit. coram Domino Rege apud Weſtm. ven. Joſiah Bacon per Willielmum Baker Attorn. ſuum Et protulit in Cur. dicti Domini Regis tunc ibidem quandam billam ſuam verſus David Debary als. dict. David Debary de Lond. Mercator. in Cuſtod. Mar. &c. de placito debiti Et ſunt Pleg. de proſequend. ſcilicet Johannes Doe & Richardus Roe quæ quidem bill. ſequitur in hæc verba ſſ. London ſſ. Joſiah Bacon queritur de David Debary als. dict. David Debary de Lond. Mercator. in Cuſtod. Mar. Mareſc. Domini Regis coram ipſo Rege exiſten' de placito quod reddat ei ſexcent. libr. legalis Monet. Angl. quas ei debet & injuſte detinet pro eo videlicet quod cum prædict. David octavo die Novembr. Anno Domini Milleſimo ſexcenteſimo nonageſimo quarto apud London videlicet in Paroch. beatæ Mariæ de Arcubus in Warda de Cheape per quoddam ſcriptum ſuum obligator. ſigillo ipſius David. ſigillat. Cur. que dict. Domini Regis nunc hic oſtenſ. cujus dat. eſt eiſdem die & anno cogn. ſe teneri & firmiter obligari præfat. Joſiah in præd. ſexcent. libr. ſolvend. eidem Joſiah cum inde requiſit. eſſet præd. tamen David licet ſæpius requiſit. &c. præd. ſexcent. libr. præfat. Joſiah nondum ſolvit ſed ill. ei hucuſque ſolvere omnino contradixit & adhuc contradic. Ad dampnum ipſius Joſiah Centum librar. Et inde producit ſectam &c. Declaration upon a Bond of Arbitration.

Et modo ad hunc diem ſcilicet diem veneris prox. poſt Craſtinum Sanctæ Trinitatis iſto eodem termino uſque quem Diem præd. David habuit licent. ad billam præd. interloquend. & tunc ad reſpondend. &c. coram Domino Rege apud Weſtm. ven. tam præd. Joſiah per Attorn. ſuum præd. quam præd. David per Johannem Green Attorn. ſuum Et idem David defend. vim & injur' quando, &c. Et pet. audit. ſcript. Obligator. & ei legitur &c. pet. etiam audit. Condition ejuſdem ſcript. obligator. prædict. Et ei legitur in hæc Verba ſſ. *The Condition of this Obligation is ſuch, That if the above-bounden* David Debary *for and on the Behalf of* Jacob Plea. Oyer.

Dernyter *of* Hamborough, *Merchant, his Executors and Adminiſtrators, do, and ſhall well and truly ſtand to, obey, abide, obſerve, perform, fulfil and keep the Award, Arbitrement, Order, final End, Determination and Judgment of* Maurice Williams, Nicholas Cutler, *and* Michael Milford *of* London, *Merchants, or any two of them, Arbitrators, as well on the Part and Behalf of the abovenamed* Joſiah Bacon; *and by their mutual Aſſents and Conſents indifferently elected, named, and choſen to arbitrate, award, order, judge, determine, and a final End to make, of, for, upon and concerning all, and all Manner of Action and Actions, Cauſe and Cauſes of Action, Suits, Debts, Accompts, Reckonings, Sum and Sums of Money, Covenants, Contracts, Promiſes, Treſpaſſes, Damages, Bonds, Bills, Specialties, Judgments, Extents, Executions, Treſpaſſes, Strifes, Differences, Controverſies, Matters, Claims and Demands whatſoever, as now are, or at any Time before the Date abovewritten, have been moved, ſtirred up, or depending between the ſaid* David Debary, *as Attorney to the ſaid* Jacob Dernyter *of the one Part, and the ſaid* Joſiah Bacon *of the other Part, for, touching or concerning certain Accompts between the ſaid* Joſiah Bacon *and the ſaid* Jacob Dernyter, *ſo as the ſaid Award, Arbitrement, Order, final End, and Determination and Judgment of the ſaid Arbitrators, or any two of them, of and upon the Premiſſes, be made and ſet down in Writing indented under their Hands and Seals, and be delivered or ready to be delivered up unto the ſaid Parties, reſpectively in Difference, requiring the ſame at or in the now Dwelling-Houſe of* John Chambers, *Scrivener, ſituate in* Lombard-ſtreet, London, *on or before the one and twentieth Day of this inſtant* November, *then this Obligation to be void, or elſe to ſtand in full Force and Virtue.* Quibus lectis & audit. idem David Debary dicit quod præd. Joſiah Bacon action. ſuam præd. inde verſus eum habere ſeu manutenere non debet quia dicit quod præd. Mauric. Williams, Nicholaus Cutler & Michael Milford in Condition præd. nominat. vel duo eorum non fecer. aliquod arbitrium in ſcript. indent. ſub manibus & ſigillis ſuis de pro & concernen. præmiſſis præd. in Condition. præd. ſuperius ſpecificat. ſuper vel ante viceſimum primum diem Novembr. in Condition. præd. mentionat. ſecundum formam & effectum Condition. præd. Et hoc parat. eſt verificare Unde petit Judicium ſi præd. Joſiah Bacon action. ſuam præd. inde verſus eum habere ſeu manutenere debeat &c.

Nul Award pleaded.

Et præd. Joſiah Bacon dic. quod ipſe per aliqua per prædict. David Debary ſuperius placitando allegat. ab actione ſua præd. inde verſus ipſum David habend. præcludi non debet quia dicit quod poſt confection. ſcript. obligator. prædict. ſcilicet ſuper viceſimum primum diem Novembr. Anno Domini Milleſimo ſexcenteſimo nonageſimo quarto in Condition. præd. ſpec. apud London. prædict. in Paroch. & Warda præd. præd. Nicholaus Cutler & Michael Milford duo Arbitrator. in Condition. præd. ſuperius ſpec. acceper. ſuper ſe onus arbitrand' & ordinand. de & ſuper præmiſſis in

Replies an Award.

Condition. præd. ſuperius mentionat. & fecerunt Arbitrium ſuum in ſcript. indentat. ſub manibus & ſigillis ſuis inter partes & de & ſuper præmiſſ. in Condition. præd. mentionat. per quod quidem Arbitrium hic in Cur. prolat. iidem Arbitrator. recitand. quod cum præd. David pro & ex parte Jacob Dernyter de Hamborough Mercator, & præd. Joſiah per mutuas obligation', Anglice, *interchangeable Obligations*, geren. dat. octavo die tunc inſtant. Novembris obligat. fuer. alt. alterutro in ſexcent. libr. conditionat. ad perſtand. arbitrium, Anglice, *to ſtand to the Award*, dict. Mauricii Williams Nicholai Cutler & Michaelis Milford vel duorum eorum Arbitratorum aliquorum mutualit. inter ſe elect. ad judicand. determinand. & finalit. finiend. de & in omnia & omnimod. Action. & Actiones Cauſam & Cauſas Action. ſect. debit. Compot. Computation. ſummam & ſummas denar. convention. contract. promiſſion. tranſgreſſion' dampn' obligation. bill. ſpecialit. judic. extent. execution. litem different. controverſ. mater. clam. & demand. quæcunque quæ tunc fuer. vel ad aliquod tempus ante dat. ſcript. obligatorii præd. mot. fuiſſent excitat. vel dependen. int. præd. David Debary (ut Attorn. dict. Jacob Dernyter & prædict. Joſiam Bacon tangen. Compot. inter prædict. Joſiah Bacon & prædict. Jacob Dernyter ita quod Arbitrium & determinat. dict. Arbitrator. vel aliquor. eorum duorum fact. fuit. in ſcript. indentat. ſub eorum vel aliquor. eorum duorum manibus & ſigillis parat. deliberand. præd. partibus in different. idem requiren. ad vel in tunc & nunc domum Manſional. Johannis Chambers ſcriptor. ſituat. in Lombard-ſtreet, London. ſuper vel ante dict. viceſimum primum diem Novembr. prout per dict. obligat. & Condition. eorundem plenius apparet. præd. Nicholaus Cutler & Michael arbitraver. & ordinaver. præd. David Debary Executor. Adminiſtrator. vel Aſſign' ſuos ex parte præd. Jacob Dernyter ad ſolvend. vel ſolvi cauſand. præd. Joſiah Executor. Admiuiſtrator. vel Aſſign. ſuis ſummam treſcent. quadragint. quinque libr. ſex ſolid. & decem denar. legalis monet. Angl. ſuper vel ante ſecundum diem Januar. tunc prox. & ulterius arbitraver. & ordinaver. quod præd. Joſiah Bacon & præd. David Debary ex parte prædict. Jacobi Dernyter ſuper ſolution. præd. denar. ſum. ut præfertur ſignarent & ſigillarent & legalit. execut. forent & deliberarent ad vel in uſum eor. alterius bonam & ſufficien. relaxation. omnis & omnimod. action. & actionum cauſæ & cauſarum action. ſect. debitor. compot. computat. ſummæ & ſummar. denar. convention. contract. promiſſion. tranſgr. dampn. obligation. bill. ſpecialitat. judicior. extent. execution. litum different. controverſ. materiar. clam. & demand. quarumcunque dic. Compa. tangen' prout per Arbitrium præd. apparet. Et idem Joſiah in facto dict. quod arbitrium præd. in forma præd. fact. poſtea ſcilicet præd. viceſimo primo die Novembris Anno ſupradict. apud London. prædict. in Paroch. & Warda præd. deliberat. fuit tam præfat. Joſiah quam præd. David ſecun-

Award ſet forth.

Award delivered.

ſecundum formam & effectum Condition. ſcript. obligator. præd. Idemque Joſiah ulterius dic. quod licet ipſe idem Joſiah a tempore confection. Arbitrii præd' hucuſque bene & vere obſervavit performavit & cuſtodivit omnia & ſingula in arbitrio præd. content. ex parte ipſius Joſiah performand. & perimplend. ſecundum formam & effectum Arbitrii ill. proteſtando etiam quod præd. David Debary a tempore confection. ejuſdem Arbitrii hucuſque non obſervavit performavit ſeu perimplevit Arbitrium præd. in aliquibus performand. & perimplend. ſecundum formam & effectum arbitrii ill. in facto idem Joſiah dic. quod præd. David Debary non ſolvit vel ſolvi cauſavit præd. Joſiah præd. ſummam treſcent. quadragint. & quinque libr. ſex ſolid. & decem denar. ſuper vel ante præd. ſecundum diem Januar. quas ei adtunc ſolviſſe debuit ſecundum formam & effectum Arbitrii præd. Et hoc parat. eſt verificare Unde pet. Judicium & debitum ſuum præd' unacum dampnis ſuis occaſione detention. debiti ill. ſibi adjudicari &c.

Proteſtando.

Breach aſſigned.

Demurrer & Joinder, & Jud. pro Def.

Placita coram Domina Regina apud Weſtm. de termino Sancti Hillarii Anno Regni Dominæ Annæ nunc Reginæ Angliæ &c. ſecundo. Rotulo 450.

Winter *verſus* Garlick. Vide fo. 75.

Civit. *Briſtol.* ff. MEmorandum, Quod als. ſcilicet Termino Paſchæ ultimo præterito coram Domina Regina apud Weſtm. ven' Edmundus Winter per Richardum Longford Attorn. ſuum Et protulit in Cur' dict. Dominæ Reginæ tunc ibidem quandam billam ſuam verſus Edvardum Garlick als dict. Edvardum Garlick de Civit. Briſtol Pharmacopolar. in Cuſtod. Mar. &c. de placito debiti Et ſunt pleg. de proſequend. ſcilicet Johannes Doe & Richardus Roe quæ quidem billa ſequitur in hæc verba ff. Civit. Briſtol. ff. Edmundus Winter queritur de Edvardo Garlick als. dict. Edvardum Garlick de Civit. Briſtol. Pharmacopolar' in Cuſtod.

Declaration upon Arbitration-Bond.

Cuſtod. Mar. Mareſc. Dominæ Reginæ coram ipſa Regina exiſten. de placito quod reddat ei Centum libr. legalis monetæ Angliæ quas ei debet & injuſte detinet pro eo videlicet quod cum prædict. Edvardus decimo nono die Auguſti Anno Regni Domini Willielmi tertii nuper Regis Angl. &c. decimo tertio apud Civit. Briſtol. in Com ejuſdem Civit. per quoddam ſcript. ſuum Obligatorium ſigillo ipſius Edvardi ſigillat. Cur. que Dominæ Reginæ nunc hic oſtenſ. cujus dat. eſt eiſdem die & Anno cogn. ſe teneri & firmit. obligari præfat. Edmundo in præd. Centum Libr. ſolvend. eidem Edmundo cum inde poſtea requiſit. eſſet præd. tamen Edvardus licet ſæpius requiſit. &c. præd. Centum libr. eidem Edmundo nondum ſolvit ſed ill. ei hucuſque ſolvere omnino concontradixit & adhuc contradicit ad dampnum ipſius Edmundi decem Librar. Et inde producit ſectam &c.

Et modo ad hunc diem ſcilicet diem Lunæ prox. poſt Octab. Sancti Hillarii iſto eodem Termino uſque quem diem præd. Edvardus habuit licent. ad billam præd. interloquend. & tunc ad reſpondend. &c. coram Domina Regina apud Weſtm. ven. tam præd. Edmundus per Attorn ſuum præd. quam præd. Edvardus per Johannem Till Adam Attorn. ſuum Et idem Edvardus defendit vim & injur. quando &c. Et pet audit. ſcripti obligator. præd. & ei legitur &c. pet. etiam auditum Condition. ejuſdem ſcripti & ei legitur in hæc verba ſſ. *The Condition of this Obligation is ſuch, That if the above bounden* Edward Garlick, *his Heirs, Executors and Adminiſtrators, for his and their Parts and Behalfs, do and ſhall in all Things well and truly ſtand to, obey, abide, perform, fulfil and keep the Award, Order, Arbitrement, final End and Determination of* John Hind *of the City of* Briſtol *aforeſaid, Gentleman, and* John Packer *of the ſame City, Bell-founder, Arbitrators indifferently named, elected, and choſen, as well on the Part and Behalf of the above bounden* Edward Garlick, *as of the abovenamed* Edmund Winter, *to arbitrate, award, order, judge, and determine of, and concerning all and all Manner of Action and Actions, Cauſe and Cauſes of Action, Suits, Bills, Bonds, Specialties, Judgments, Executions, Extents, Quarrels, Controverſies, Treſpaſſes, Damages and Demands whatſoever, at any Time or Times heretofore had, made, moved, brought, conſented, proſecuted, done, ſuffered, committed or depending by and between the ſaid Parties, or either of them, ſo as the ſaid Award be made in Writing, and ready to be delivered to either of the ſaid Parties, requiring the ſame on or before the eighth Hour in the Afternoon of this preſent Day: But if the ſaid Arbitrators do not make ſuch their Award of and concerning the Premiſſes by the Time aforeſaid, That then if the ſaid* Edward Garlick, *his Executors and Adminiſtrators for his and their Parts and Behalfs, do in all Things well and truly ſtand to, obey, abide, perform, fulfil and keep the Award, Order, Arbitrement, Umpirage, final End and Determination of* Robert Godfrey *Gent. of and concerning the Premiſſes, ſo as the ſaid Umpire do make his*

Plea.

Oyer of Condition.

Award or Umpirage of and concerning the Premiſſes in Writing, and ready to be delivered to either of the ſaid Parties requiring the ſame, on or before the eighth Hour in the Afternoon of the Day next enſuing the Date of theſe Preſents, then this Obligation to be void or elſe to remain in full Force, Strength and Virtue. Quibus lectis & auditis idem Edvardus dic. quod præd. Edmundus action. ſuam præd. inde verſus eum habere ſeu manutenere non debet quia dic. quod præd. Johannes Hinde & Johannes Packer arbitrator. in condition' præd. nominat. nullum fecer. arbitrium & ordination. arbitrament. final. concluſion' Anglice, *final End*, ſeu determination. de & ſuper præmiſſis in condition. præd. ſuperius mentionat. ad vel ante octavum horam poſt meridiem præd. decimi noni diei Auguſti anno decimo tertio ſupradicto exiſten. die dat. ſcripti obligator. præd. Sed idem Edvardus ulterius dicit quod præd. Robertus Godfrey umpirator in eadem Condition. ſimiliter nominat. accepto ſuper ſe onere arbitrandi de & ſuper præmiſſis in Condition. præd. ſuper. ſpecif. poſtea & ante horam octavam poſt Meridiem diei prox. ſequen. dat. ſcripti obligator. præd. in ead. Condition. ſpecificat. ſcil. ad horam octavam ante meridiem ejuſdem diei apud Civit. Briſtol. præd' in Com. ejuſdem Civit. fecit Umpirag. ſuum in ſcriptis de & ſuper præmiſſis præd. adtunc & ibidem parat. deliberand. partibus præd. modo & forma ſequen. videlicet quod omnes ſect. ad legem tunc penden. inter partes præd. ceſſarent & non ulterius proſequerent. quodq; præd. Edvardus Garlick ſolveret prædicto Edmundo Winter apud tunc domum manſional. Samuel. Fitſall ſituat. in Caſtle-ſtreet in Briſtol. præd. ſummam decem ſolid. & cuſtag. legis quæ præd. Edmundus Winter ſuſtinuiſſet, Anglice, *had been at*, in ſect. ill. Et quod poſt ſolution. dictæ ſummæ decem ſolid. in modo ſupradicto ipſi præd. Edmundus Winter & Edvardus Garlick darent alt. alteri eor. general. relaxation. omnium action. ſectar. controverſiar. & demand. a principio mundi uſque ad decimum nonum diem tunc inſtant. Auguſti in communi forma Et idem Edvardus ulterius dicit quod poſt confection. umpirag. præd. & ante diem exhibitionis billæ ipſius Edmundi præd. ſcilicet viceſimo primo die Auguſti anno decimo tertio ſupradicto apud dictam domum manſional. præfat. Samuel. Fitſall ſituat. in Caſtle-ſtreet in Briſtol. præd. ipſe idem Edvardus parat. fuit & obtulit ad ſolvend. eidem Edmundo adtunc & ibidem præſenti exiſten. præd' decem ſolid. & ad ſigilland. & ut factum ſuum eidem Edmundo deliberand. ſcriptum general. relaxation. omnium actionum ſectarum controverſiarum & demand. a principio mundi uſque ad præd. decimum nonum diem Auguſti in umpirag. præd. mentionat. in communi forma ſed præd. Edmundus præd. decem ſolid. & ſcriptum relaxation. ill. de eodem Edvardo recipere ſeu acceptare adtunc & ibidem penitus recuſavit Et hoc parat. eſt verificare Unde pet. judicium ſi præd. Edmundus action. ſuam præd. inde verſus eum habere ſeu manutenere debeat, &c.

Pleads no Award made by the Arbitrators, but that the Umpire died.

Umpirage ſet forth that the Defendant ſhould pay Coſts of a Suit.

Tender and Refuſal.

Et prædictus Edmundus dicit quod ipſe per aliqua per præd. Edvardum ſuperius placitando allegat. ab actione ſua præd. prædict. inde verſus eum habend. præcludi non debet quia dicit quod prædictus Edvardus ante præd. tempus confection. ſcripti obligatorii præd. apud Civit. Briſtol. præd in Com. ejuſdem Civit. ac infra jur.Cur. dicti nuper Domini Regis Civitat. ſuæ de Briſtol.præd. tent. coram Majore & Alderman. ejuſdem Civitat. falſo & malicioſe dixiſſet & propalaſſet de eodem Edmundo diverſa falſa ficta ſcandaloſa & malicioſa verba idemque Edmundus pro obtentatione & recuperation. dampnor. occaſione diction. & propalation. verborum illorum ante præd. tempus confection. ſcripti obligatorii præd. levaſſet in præd. Cur. dicti nuper Domini Regis Civitat. Briſtol. præd tent. coram Majore & Alderman. Civitat. præd. quandam querelam verſus præd. Edvardum de placito tranſgreſſ. ſuper Caſum ac ſuperinde talit. proceſſum fuit quod ipſe idem Edmundus apud Civit. Briſtol. præd. in Com. ejuſdem Civit. ſolvit erogavit & extrapoſuit in proſecution. querelæ præd. verſus præd. Edmundum ſummam quatuor libr. quinque ſolid. & decem denar. legalis monet. Angl. ac ſuperinde iidem Edmundus & Edvardus pro determination. ſectæ ill. & omnium al. demandorum quorumcunque poſtea ſcilicet præd. decimo nono die Auguſti anno regni dicti nuper Domini Regis decimo tertio ſupradicto apud Civit.Briſtol. in Com. ejuſdem Civit. per ſeparal. ſcripta obligatoria ſua per alterum alteri eorum mutualit. ſigillat. & deliberat. ſubmiſer. ſe ipſos performare & perimplere arbitrium præd. Johannis Hinde & Johannis Packer ſeu in defectu inde umpirag. præd. Roberti Godfrey ſcilicet præd. Edvardus per ſcriptum ſuum obligatorium in narratione præd. ſuperius mentionat.Et idem Edmundus in facto dicit quod ipſe idem Edmundus poſt confection. umpiragii præd per præd.Robertum & ante diem exhibition. bill. ipſius Edmundi præd. ſcilicet præd. viceſimo primo die Auguſti anno regni dicti nuper Domini Regis decimo tertio ſupradicto apud Civit. Briſtol. præd. in Com. ejuſdem Civit. notic. præd. Edvardo dedit quod ipſe præd. Edmundus in proſecution. ſectæ præd. ſolviſſet & expendiſſet præd. ſummam quatuor. libr. quinque ſolid. & decem denar. & denar. ill. de eodem Edvardo adtunc & ibidem demandavit quodque præd. Edvardus eaſdem quatuor libr. quinque ſolid. & decem denar. eidem Edmundo ad aliquod tempus hucuſque non ſolvit ſecundum formam & effectum umpiragii præd. Et hoc parat. eſt verificare Unde petit judicium & debitum ſuum præd. unacum dampnis ſuis occaſione detention. debiti illius ſibi adjudicari &c.

Replies and ſets forth the Cauſe of Action, and levying a Plaint.

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And their Submiſſion to the Award by the ſaid Bond.

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Demurrer & Joinder.

The End of the Second Volume.



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38. But where ſued as Adminiſtrator, if he pleads he is Executor, he muſt alſo traverſe the dying Inteſtate 297

39. Where an Adminiſtrator is charged as Aſſignee, the Judgment is *De bonis propriis* 309

40. But where charged as Adminiſtrator, tho' he might have been charged as Aſſignee, 'tis only *De bonis Teſtatoris* 316

41. A Judgment againſt him as Executor may be pleaded in Bar to another Action brought againſt him as Adminiſtrator 296

42. On a Writ of Inquiry, after an Interlocutory Judgment reviv'd by *Sci' Fa'* on 8, 9 *W.* 3. the final Judgment muſt be againſt the Adminiſtrator and not the Inteſtate 42

43. Adminiſtrator under Letters Patents can't have *Caſe* for maliciouſly hindring him, by putting in *Caveats*, *&c.* 37

44. An Adminiſtrator impowers *A.* to receive the Inteſtate's Debts, but a Will appearing the Adminiſtration is repealed, the Executor may have Aſſumpſit againſt *A.* as for Money received to his Uſe 27

See alſo *Executors.*

Admiralty.

1. Marriners Wages due by Parol, are ſuable there, tho' the Contract on Land 31

2. *Aliter* if due by Deed or ſpecial Agreement *ibid.*

3. The Mate of a Ship may ſue the Maſter thereof there for his Wages 33

4. But the Maſter can't ſue there on his Contract with the Owners *ibid.*

5. So where an Executor of a Maſter ſued there for the Maſter's Wages, a Prohibition was granted *ibid.*

6. For tho' Suit there for Marriners Wages is allow'd by mere Indulgence, yet it never was for the Maſter's *ibid.* and 424

7. By their Law every Contract with the Maſter implies an Hypothecation of the Ship 34

8. But not ſo by the Common Law, without an expreſs Agreement *ibid.*

9. And the Maſter by their Law may Hypothecate the Goods as well as the Ship *ibid.*

10. And on ſuch Hypothecation the Maſter is ſuable there, but not the Owners 35

11. The

11. The Statute of Limitations is pleadable there to a Suit for Seamens Wages 424

12. Where it has Juriſdiction their Sentences bind, and Common Law Courts muſt obſerve their Determinations 32, 33

13. Tho' the Admiralty Court deny a Copy of the Libel, yet no Prohibition (till Appearance) *contra* of the Spiritual Court 553

14. Prohibition can't be granted to try the Validity of their Proceſs for Appearance, before Libel or Appearance 35

15. But if their Proceſs be in Nature of an Execution, Prohibition may be before Appearance 31, 35

16. In a Suit there the Principal died before Sentence, and they proceeded on the Stipulation againſt the Sureties. *Quære* if a Prohibition may be 33

17. See before, in Actions of the Caſe. Caſe lies by the Owner of a Ship for arreſting her by Admiralty, Proceſs, *&c.*

See alſo *Maſter and Servant, poſt.*

Advowſon vide *Preſentation*, and *Quare Impedit.*

Affidavits vide *Oaths.*

Age.

1. The Minority of an Adminiſtrator ceaſes at the Age of 17. But of an Executor not till 21 39

2. The Age for making a Will to diſpoſe of Goods, Chattels and Perſonal Eſtate, may be at 14

3. But Lands cannot be diſpos'd of by Will till the Age of 21 44

4. Yet if one be born 1 *Feb.* at Eleven at Night, he may make his Will of Lands at One in the Morning on the laſt of *January* in his 21ſt Year, becauſe the laſt Day of his full Age is then begun *ibid.*

Agreement and Diſagreement.

1. An Agreement may be either by Record, or by Deed, or by Parol (vide *Preſentation*) 43

2. A Policy of Inſurance altered by Agreement after it was underwritten, yet good 444

3. And in ſome Caſes a Parol Agreement may avoid a Writing if made at the ſame time 445

4. A Goldſmith's Note, or Bill of Exchange, not to be taken as Caſh, except ſo expreſly agreed by the Receiver 124, 442

5. See what Agreements are good on Parol Leaſes for Tythes, *&c.* 414, 657

See alſo *Bargain and Sale of Goods.*

Aiders vide *Principal and Acceſſary.*

Alehouſes.

1. To forfeit 10 *s.* to the Poor if they permit any Inhabitant to ſit Tipling above an Hour 45

2. Before 5, 6 *Ed.* 6. any Perſon might keep an Alehouſe *ſans* Licence, being a lawful Means of Living *ibid.*

3. But if diſorderly kept it was indictable as a Nuſance, and by that Statute two Juſtices (*Quor' unus*) may ſuppreſs it *ibid.*

4. And none are now to keep Alehouſes unleſs Licenſed and Recognization given *ut ibid.* *ibid.*

5. And if any does, he may be committed for three Days, and bound with Sureties to appear at the Seſſions *ibid.*

6. That Statute does not extend to

Inns being for entertaining Travellers, *&c.* unleſs they degenerate to Alehouſes *ibid.*

7. But one that keeps an unlicenſed Alehouſe is not to be Indicted, becauſe puniſhable by the Statute otherwiſe *ibid.*

8. See there the Difference between ſuppreſſing a Licenſed and Unlicenſed Alehouſe 45, 46

9. The Seſſions can't ſuppreſs an *Alehouſe* licenſed by two Juſtices 470, 471

Aliens and Denizens.

1. *Turks* and *Infidels* are not *perpetui inimici* to us, *&c.* and Juſtice *Brooks* Opinion denied 46

2. For tho' they differ from us in Religion, that does not oblige us to be Enemies to their Perſons *ibid.*

3. They are the Creatures of God, of the ſame Species with us, and 'tis a Sin to hurt their Perſons *ibid.*

4. If an *Alien Enemy* come hither *ſub ſalvo Conductu*, he may maintain an Action *ibid.*

5. So may an *Alien Amy* that lives here under the King's Protection, tho' a War afterwards happen between the two Nations *ibid.*

6. So an Alien Enemy that lives here in Peace under Protection, may ſue a Bond, *&c.* *ibid.*

7. For ſuing is but a conſequential Right of Protection; *aliter* of one Commorant beyond Sea *ibid.*

8. Alſo, the Feme Covert of an Alien Enemy, ſhe living here under Protection, is chargeable as a Feme Sole 116

Allegiance vide *Laws.*

Amends vide *Tender*, &c.

Amendment.

1. While the Declaration, *&c.* is in Paper, the Court may amend at pleaſure, becauſe not within the Statutes of Amendments 47, 520

2. But when it comes to be in Parchment, the Court can mend no further than thoſe Statutes allow, for 'tis then a Record *ibid.*

3. Stat' 14 *E.* 3. *c.* 6. and 8 *H.* 6. *c.* 12, 13. are the only Statutes of Amendments, the others are Statutes of Jeofails 51

4. Declaration, *&c.* cannot be amended on Demurrer, after Entry on the Roll 50

5. But on a Plea to the Right, or in Abatement, it may be reaſonable to amend *ibid.*

6. Yet Declaration againſt *J. G.* Knt. on Plea in Abatement that he is Knt. and Bart. denied to be amended *ibid.*

7. A Judgment enter'd on the Plea Roll was amended by the Paper Book ſigned by the Maſter *ibid.* and 51

8. Variance between the Writ of Erros and the Record refuſed Amendment, tho' the Curſitor's Note was right 49

9. For a Writ of Error is a Commiſſion to the Judges, and the Court can't amend their own Commiſſion *ibid.*

10. At Common Law no Difference as to Amendments between Civil and Criminal Caſes, *contra per Stat'* 47, 51

11. A Writ of Covenant for a Fine, being an Original, is not amendable by Common Law or Statute 52, 53

12. No difference *quoad hoc* between Actions amicable and adverſary, and 5 *Co.* 45 *Gage*'s Caſe denied 53

13. Variance between the *Scire Fa'* and the Judgment not amendable, *&c.* vide *bis* 52

14. Where

14. Where the *Niſi prius* Roll may be amended by the Plea Roll, and where not 48, 49

15. *Venire Ret'* 23 *Octob. Diſtringas* Teſted 24. a Diſcontinuance and not amendable 51

16. In the *Diſtringas* the Day of *Niſi prius* was appointed after the Day in Bank, and after Verdict held not amendable by the Plea Roll becauſe the Judges Authority was confined to that Day 48, 49

17. Ejectment againſt ſeven, all join in the Common Rule, and the Iſſue was Right in the Plea Roll, *&c.* But the *Niſi prius* Roll was againſt five only, and after Verdict *pro Quer'* this amended by adding the two others 48

18. A Demiſe in Ejectment laid 1697 for 96, not amendable after Verdict, becauſe it would be another Title *ibid.*

19. A Verdict either general or ſpecial may be amended by the Clerk of Aſſizes Notes in Civil Caſes, but not in Criminal 47, 53

20. A Special Verdict has been amended by the Notes of the Council in the Cauſe, and that after Error brought 47, 53

21. An Information may be amended after Plea pleaded, and *per Holt* after the Record ſealed up. *Q.* 47

22. A Plea to Indictment of Murder amended after Replication and before Entry on the Roll *ibid.*

23. An Information of Forgery amended in ten Places (not material) without Coſts or Imparlance 50

24. If a Record in *B. R.* be amended by the Record in *C. B.* the Coſts (if any) muſt be given below 49

25. A *Diſtringas* with a Blank for *Debiti*, *i. e.* the Cauſe of Action amended after Verdict, as no *Diſtringas* 454

26. For, want of a *Diſtringas* or no *Diſtringas* is aided by Verdict, *contra* of an ill *Diſtringas* *ibid.*

27. If the Plaintiff moves to amend his Declaration the ſame Term the Defendants Plea comes in, he need not give new Rules to plead 520

28. After a Plea to Iſſue or Demurrer joined, while in Paper only, the Party may amend his Plea, or wave his Demurrer *ibid.*

29. See an Appeal amended by ſtriking out of the Count *per Attornatum ſuum* 64

30. After Judgment by Default, and Error brought, the Declaration was amended by the Warrant of *Attorn'* on the top of the ſame Roll 88

Amerciaments vide *Fines* and 54.

Amicus Curiæ vide 78, 447, 448.

Antient Demeſne.

1. Tenants in antient Demeſne are free as to their Perſons, but not their Eſtates 57

2. The Privileges ariſe from the Conſtitution and Nature of the Thing Coeval, with the Government it ſelf *ibid.*

3. They are ſuppoſed to commence by Act of Parliament; for they can't now be created by Grant *ibid.*

4. When tryable by the Record of *Doomſday-Book*, and when by the Country *ibid.*

5. Antient Demeſne is Land under the Title of *Terra Regis* in that Book and none other *ibid.*

6. Antient Demeſne Lands held of a Manor in Antient Demeſne are only impleadable in the Lords Court there 56

7. But where Parcel of the Manor only is antient Demeſne, there the parti-

particular Lands may be impleaded in the King's Court *ibid.*

8. By a Recovery at Common Law, Antient Demeſne becomes Frank Fee, until reverſed 57

9. Deceit lies for levying a Fine of Antient Demeſne Lands 210.

Annuity and Penſion.

1. The King can't grant an Annuity to charge his Perſon, for his Perſon is not chargeable therewith, tho' a Subject's is 58

2. But he may grant it out of his Exciſe or other Branch of his Revenue, which ſhall be charged therewith *ibid.*

3. A Penſion out of an Appropriation, tho' by Preſcription, is ſuable in the Spiritual Court *ibid.*

4. For it could not begin but by the Grant and Inſtitution of ſpiritual Perſons *ibid.*

5. And whether granted by the Biſhop's Ordinance, or by his Concurrence with the Patron, the Church it ſelf is charged *ibid.*

6. Yet ſuch Annuity, *&c.* can't be releaſed to the Ordinary becauſe it is Temporal *ibid.*

Appeal.

1. The Plaintiff in Appeal of Murder, *&c.* muſt count in Perſon, and cannot by Attorney 62, 64

2. And if he be not preſent he may be demanded and Nonſuited *ibid.*

3. Yet ſuch Nonſuit is not peremptory, becauſe before Appearance *ibid.*

4. An Appeal is to be arraigned in *French*; but the Roll deliver'd in is to be in *Latin* *ibid.* and 61

5. But tho' it muſt be commenced in Perſon it may be proſecuted by Attorney, unleſs where Wager of Battail lies 62

6. And as the Plaintiff can't count, neither can the Defendant therein appear or plead by Attorney 59

7. *Nul tiel* Pariſh is a good Plea therein, but not pleadable by Attorney *ibid.*

8. The Pariſh may be named and not the Vill; for a Pariſh is not intended to contain more than one Vill. (Q.) *ibid.*

9. Erroneous Proceſs therein is aided by the Defendant's Appearance and Pleading to Iſſue *ibid.*

10. *Aliter* where he challenges the Defect by demurring in Abatement, *&c.* *ibid.*

11. And ſee *Numb.* 1. *ib.* That an Adjournment after a void Plea receiv'd diſcontinues the Appeal *ibid.*

12. What is ſufficient Certainty in a Count on an Appeal 60

13. On an Appeal of Murder the Party may be Bailed by *B. R.* tho' convicted of Manſlaughter 61, 62

14. And on ſuch Conviction may be allowed his Clergy, but ſhall not be diſcharged thereupon 61

15. For his Recognizance is to ſtand till he has diſcharged the Appeal by *Sci' Fa'* againſt the Appellant *ibid.*

16. And ſee there the proceeding on ſuch *Sci' Fa'* and the arraigning of the Appeal thereon *de Novo* *ibid.*

17. Tho' the Appeal was put *ſine die*, yet no Diſcontinuance, for the *Certiorari* continues it 62

18. Said, An Appeal either by Writ or Bill, is always arraigned on the Plea ſide unleſs it come in by *Certiorari*, and then on the Crown ſide *ibid.*

19. The Recognizance for Bail in Appeal may be either to the King, or Appellant, but beſt to the King *ibid.*

20. See the manner of pleading the former Conviction, *&c.* on arraigning the Appeal *de Novo* *ibid.*

21. And that a Conviction of Manſlaughter is a good Bar therein, tho' Clergy

Clergy not had by Default of the Court 63

22. In a Writ of Appeal, want of fifteen Days *inter* the *Teste & Rei'* cured by pleading in Chief *ibid.*

23. See the Case of an Infant suing an Appeal by Guardian, and the Under Sheriff committed and fined for delivering the Writ to him 176, 177

Appearance.

1. Formerly, tho' a Writ was not return'd, yet the Defendant might appear at the Day either to save a Penalty or his Inheritance 64

2. A Nonsuit before Appearance is not peremptory in Appeal, *&c.* *ibid.*

Appendant vide *Incident.*

Apportionment and Division.

1. Where *A.* by Contract subjects himself to one Action only, it can't be divided so as to subject him to two 65

2. *Ergo* Indorsee of part of a Sum in a Bill of Exchange can't have Action for that part *sans* shewing the other part to be satisfied *ibid.*

3. So where the Contract is at first entire, it cannot afterwards be divided in an Action *ibid.*

4. As where the Contract is to pay 100 *l. per Annum* for his Service, Action lies not for 3 Quarters *ibid.*

5. So of a Lease for Years at 20 *l. per Ann'* it lies not for any less Term than a Year *ibid.*

6. And so of other Contracts for Annuities, Wages, Debts, *&c.* the Contract can't be apportioned *ibid.*

7. But if in a Lease the *Habendum* be for Years, yet the Rent may be apportioned according to the *Reddendum* 141

Apprentices.

1. An Apprentice cannot be bound nor discharged without Deed 68

2. He is not assignable over (except by the Custom of *London* to one of the same Trade) 66, 68

3. Nor is the Master's Executor bound to provide for an Apprentice in Husbandry, on 5 *El.* 66

4. Yet the Executor is liable in Covenant if he does not instruct an Apprentice or find him another Master 66, 68

5. Whatever the Apprentice gains belongs to the Master, and he may have an Action for it 68

6. A Covenant between the Master and a third Person, the Servant being no Party, makes no Apprentiship 479

7. Service as Apprentice beyond Sea, qualifies one to use a Trade in *England* within 5 *El.* vide *bis* 67

8. And following a Trade for seven Years is sufficient without any Binding, *&c.* and 5 *El.* a hard Law 613

9. Justices may compel a Master to take an Apprentice, *&c.* 67

10. Justices may discharge an Apprentice, and also order a Restitution of the Money given with him *ibid.* and 490

11. So the Sessions may discharge him by original Order there, and order the Money to be returned 68, 491

12. An Apprentice may gain a Settlement (tho' the Master has none) as an hired Servant, by 14 *Car.* 2. 533

13. An Order by four Justices for discharging an Apprentice, *&c.* good, tho' the Master does not appear 490

14. But their Power to discharge Apprentices extends only to such Trades as are named in the Statute 471, 490

15. And the Order of Discharge must be under the Hands and Seals

of four Juſtices of Peace 470

16. But in *Certiorari* to remove ſuch Order the very Diſcharge need not be return'd, but only the Subſtance thereof *ibid.*

See alſo *Indictments*, *Orders* and *Seſſions*.

Arbitrament.

1. Where an Award creates a new Duty, the old is extinguiſhed 69

2. But if it only ordains a Releaſe to diſcharge the old Duty, 'tis otherwiſe *ibid.*

3. An Award may be good tho' no Time appointed for Performance *per Holt*, for the Law ſupplies the Time *ibid.*

4. For whether it be to be on Requeſt or Tender, or not, the Law ſays it ſhall be in convenient Time *ibid.*

5. An Award that the Party or his Executors ſhall releaſe, *&c.* is good, for either may be ſued for Nonperformance *ibid.*

6. An Award that a Suit in *Chancery* ſhall ceaſe, is good 75

7. An Award that all Suits ſhall ceaſe, is good and final; but an Award to be Nonſuit is not 74, 75

8. An Award may be good in part and void in part 74, 83

9. As an Award to make general Releaſes of all Demands to the Time of the Award is good for ſo much as goes to the Time of the Submiſſion, and void for the Reſidue 74

10. An Award to pay the Coſts of ſuch a Suit is uncertain, *contra* if to pay ſuch Coſts as the Maſter ſhall tax 75

11. An Award that *A.* ſhall beg *B*'s Pardon in ſuch Manner and Place as *B.* ſhall appoint is void 71

12. *Quære* if an Award of Money to be paid to a third Perſon be good unleſs it appear to be for the Benefit of one of the Parties 74

13. An Award of a Collateral thing in Satisfaction held a good Plea without ſhewing Performance 76

14. Money paid on a void Award may be pleaded or taken as Accord with Satisfaction 71

15. An Award pleaded as made *de & ſuper Premiſſis*, is not enough unleſs it appear to be ſo *in ſe* 70

16. *Quære* if an Award unperform'd, tho' it gives a new Duty, can be a good Plea after time of Performance elapſed 69

17. A Parol Award may be pleaded, ready to be delivered, *&c.* 75

18. If an Award be pleaded without Date, it muſt be computed from the Delivery 76

19. A Submiſſion by *A.* as Attorney for *B.* concerning Accounts *inter B* and *C.* good to bind *A.* but not *B.* 70

20. A Submiſſion to an Award made a Rule of Court, tho' the Conſent was only Conditional 72

21. An Award made under a Rule of Court is *quaſi* part of the Rule 71

22. And on Breach of ſuch Award, the Party may proceed both by Action and Attachment at the ſame time 73, 83

23. Service of a *Subpœna* held a Breach of a Rule of Reference made at *Niſi prius*, and Attachment granted. Vide *Attachment* 73

24. What a good Cauſe to ſet aſide an Award made by Rule of Court, and what not 71

25. Appointment of an Umpire by Arbitrators before the Time expires for making their Award, is void 70

26. Yet ſee where an *Umpirage* may be made before ſuch Time is expired or not 72

27. In what Caſes ſuch Appointment of an Umpire is revocable or not 70

28. On

28. On a Reference to three Foremen of the Jury, the Regularity of their Proceedings examin'd into 73,84

29. In Debt on Bond to perform an Award, Omiſſion in the Replication of a void part of the Award, is no Variance, *aliter* if not void 72

See alſo *Attachment*.

Arreſt of Judgment.

1. There are two ſorts of Matter for which Judgment may be arreſted, *viz.* Intrinſick and Extrinſick 77

2. Intrinſick, when ſome Matter appears on the Record it ſelf which renders the Judgment erroneous *ibid.*

3. Extrinſick, when ſome foreign Matter is ſuggeſted, which renders the Writ not only abatable but abated *ibid.*

4. The difference between the old Method of Pleading and moving in Arreſt, *&c.* 77, 78

5. And ſee *Numb.* 4. The Method at this Day of moving in Arreſt, *&c.* 78

6. The Party has commonly four Days after the *Poſtea* brought in to move in Arreſt 77

7. But if the *Diſtringas* be returnable within Term, ſo that there are not four Days between the Tryal and the End of the Term, Judgment may be entred if not arreſted that Term 77

8. After a *Capiatur pro* Fine iſſued no Arreſt of Judgment 78

9. Judgment arreſted becauſe more Damages recover'd than there ought 663

10. See the Entry of an Arreſt of Judgment on a Prohibition, where a Verdict was for the Plaintiff 655

11. On Motion in Arreſt and Rule to ſtay Judgment *quo utque*, *&c.* and afterwards the Court being divided, no Judgment could be had 17

12. In Aſſumpſit, after Verdict Judgment arreſted becauſe *nudum pactum* 364

13. See a Judgment arreſted becauſe more Damages given than there ought 663

See alſo *Judgments*, *Tryals*, and *Verdicts*.

Arreſt of the Body.

1. Arreſt on *Sunday* is void, and the Party may have falſe Impriſonment 78

2. No Arreſt can be without actually touching the Body 79

3. But if the Bailiff be prevented from touching, by the Parties offering to ſtrike with a Weapon, 'tis an Aſſault *ibid.*

4. And if the Bailiff once touch him in the Arreſt, he may purſue and break open the Houſe to take him *ibid.*

5. Or he may have an Attachment or return a Reſcue againſt him *ibid.*

6. Where there are two Sheriffs the Arreſt or Neglect of one is the Arreſt or Neglect of both 152

See alſo *Eſcape*, and 274

Aſſault, vide *Treſpaſs* and *Arreſt* 3.

Aſſemblies unlawful, vide *Riots*, &c.

Aſſets.

1. If *A.* take a Bond for another in Truſt and dies, this is not Aſſets in the Hands of *A*'s Executors 79

2. So if the Obligee aſſigns over a Bond, and covenants not to revoke, and dies, this is not Aſſets in the Hands of the Obligee's Executor *ibid.*

3. If the Executor of Leſſee for Years enter, *&c.* no part of the Profits but what is above the Rent is Aſſets *ibid.*

4. For

4. For the Rent is receiv'd by the Executor as Tertenant, and as appropriated to the Uſe of the Leſſor *ibid.*

5. *Quære* the Diſtinction between Legal and Equitable Aſſets, and how far either are liable 507

6. And how far Lands are liable to pay Debts as Aſſets 80

7. Outlawry upon Meſne Proceſs does not make the Debt a Lien upon the Land *ibid.*

8. And bringing Debt upon a Judgment is no waver of the Lien created by the Judgment *ibid.*

9. Where a Debtor pays the Teſtator's Debt to *A.* with conſent of Executor 'tis Aſſets; *aliter* if without Conſent 207

10. Unleſs the Executor brings Action and recovers, and then 'tis Aſſets even before Execution *ibid.*

See alſo *Executors* and *Legacies.*

Aſſignment.

1. Where the Leſſor himſelf can't maintain Covenant, *&c.* his Aſſignee ſhall not 81

2. *Ergo* the Aſſignee of a Covenant can't ſue in *England* for Rent reſerv'd on Lands in *Ireland*, tho' payable in *London* 80, 81

3. The Aſſignee of a Reverſion, tho' by Fine, can't have Covenant for the Rent, *&c.* without Attornment. *Q.* 82

4. But ſee now the Statute 4, 5 *Annæ*, *c.* 16. for Amendment of the Law in this Particular

5. Leſſee aſſigns to *A.* *A.* aſſigns to *B.* *ſans* Notice to the Leſſor, yet Leſſor can't have covenant againſt *A.* for Arrears incurred after the Aſſignment of *A.* *Q.* 81

6. And *Kighly's* Caſe in 1 *Sid.* 338. *Ray*, 162. 2 *Keb.* 260. denied *ibid.*

7. But admitted he may have Covenant againſt *A.* for Rent due before Aſſignment *ibid.*

See alſo *Covenant.*

Aſſize.

1. The Writ in Aſſize may be returnable at any Common Day or Return Day; alſo the Aſſize may be adjourn'd 82

2. The Aſſize is to be arraigned in *French*, but can't be proceeded in before the Recognitors appear *ibid.*

3. The Demandant Nonſuited becauſe not ready to Count *inſtanter* on the Tenant's Demand *ibid.*

4. But ſuch Nonſuit not peremptory; for the Demandant may have a new Aſſize *ibid.*

5. If the Defendant in Aſſize plead in Abatement, he muſt plead over in Bar at the ſame time 83

6. No Imparlance allowed therein without good Cauſe, for it is *Feſtinum remedium* *ibid.*

7. And where ſeveral are Defendants it ſhall be taken by Default againſt ſuch of 'em as do not appear the firſt Day *ibid.*

Aſſumpſits, vide ante *in Actions on the Caſe*, &c. *and Breach*, &c. poſt.

Attachment.

1. In Caſes of Awards, tho' not legally good, Attachment lies for Nonperformance 83

2. *Aliter* if impoſſible, but the Party is excuſed only as to that Part which is impoſſible 74, 83

3. It lies not for not performing an Award (tho' made on a Rule of Court) without a perſonal Demand 83

4. On Award of three Foremen (tho' Verdict given for Security) Attachment

ment for the Breach 73, 84

5. For Contemptuous Words of the Court Attachment without a Rule to ſhew Cauſe 84

6. When one is taken on Attachment for ſuch Contempt, *&c.* he enters into Recognizance to anſwer Interrogatories *ibid*

7. On Rule to put off Tryal on Payment of Coſts, no Attachment for Nonpayment 83

8. Attachment for a Reſcue is never granted upon Affidavits only; but it muſt be return'd on the Writ 586

9. See an Attachment againſt a Judge of a Corporation Court, and what a Contempt is 201

See alſo *Sheriff*, and Page 260.

Attainder.

1. Attainder of High Treaſon by Commiſſion on 28 *H.* 8. *c.* 15. works corruption of Blood 85

2. But not Attainder of Pyracy, or Treaſon, *&c.* before the Conſtable and Marſhal, or Admiral *ibid.*

3. One Attainted for Counterfeiting the Coyn on 8, 9 *W.* 3. forfeits Lands, but Corruption of Blood is ſaved *ibid.*

4. So that the Forfeiture and the Corruption are diſtinct parts of the Penalty, and one may be and the other not *ibid.*

5. In Attainders of Felony the Forfeiture to the Lord is only by way of Eſcheat *pro defectu Tenentis* *ibid.*

6. And the not deſcending is but the conſequence or effect of ſuch Incapacity *ibid.*

7. But in Treaſon the Lands come to the Crown as an *immediate Forfeiture*, and not as an Eſcheat *ibid.*

8. An Executor may bring Error to reverſe the Attainder of the Teſtator 295

See alſo *Treaſon.*

Attorney and *Solicitor.*

1. The Stat. 3 *Jac.* 1. *c.* 7. extends only to Attorneys of the Courts at *Weſtminſter*, and not to Attorneys of Inferior Courts 86

2. That Statute may be pleaded to Debt and *indebit' aſſump'* unleſs a ſpecial Promiſe laid, but then not, nor to an *Inſimul Comp'* *ibid.*

3. An Attorney is not compellable to appear for any one, unleſs he takes his Fee or backs the Warrant 87

4. Where an Attorney appears for any the Court will not queſtion his Authority, but leaves the Party to his Action 86

5. Nor ſhall a Judgment be ſet aſide for that he appeared without Warrant, if he be ſufficient, *contra* if inſufficient 88

6. And his Conſent to accept an Iſſue, *&c.* after Judgment ſign'd, binds the Clyent, tho' contrary to his expreſs Order 86

7. Where an Attorney's Bill on Action brought by his Executor ſhall be referred to the Maſter or not, *vide* 89

8. Where Writings come to his hands as an Attorney the Court will on Motion make a Rule to redeliver them 87

9. But where they come to his hands in any other Manner, the Party muſt reſort to his Action *ibid.*

10. A Warrant of Attorney for the Plaintiff in the principal Action can't extend to the Suit againſt the Bail, but there muſt be a new Warrant 603. 89

11. A Judgment by Confeſſion upon a Warrant of Attorney may be enter'd in the Vacation as of the Term precedent, tho' the Defendant died in the Vacation 87

12. But a *poſt Terminum* Roll can't be filed without leave of the Court *ibid.*

13. A *Memorandum* was amended by the Warrant of Attorney on the ſame Roll 88

14. Till a Warrant be filed or entred 'tis not a Matter of Record, but one may appoint an Attorney in Court upon Record *ibid.*

15. See the antient Practice of entring Warrants of Attorney on a diſtinct Roll, and when altered *ibid.*

16. A *Remittit dampna* may be by Attorney, but a *Retraxit* muſt be in *propria perſona* 89

17. An Attorney Defendant may have the Venue changed from any other County to *Middleſex* (vide *Barriſter*) 668

18. See an Attorney Fined 515

See alſo *Abatement*, *Privilege*, *Rules of Court*, &c.

Attornment.

1. Leſſor makes a ſecond Leaſe, and before the firſt expires levies a Fine. Attornment by the firſt Leſſee to the Conuſee is ſufficient 90

2. In pleading a Feoffment of a Manor, 'tis not neceſſary to ſhew the Attornment of the Tenants 91

3. Attornment is pleadable without a Venue, but triable only where the Land lies *ibid.*

4. Upon Iſſue *Non conceſſit*, Attornment need not be given in Evidence 90

5. Aſſignee of a Reverſion tho' granted by Fine, could not have Action for Rent without Attornment 82

6. But this is now remedied by the Statute 4, 5 *Annæ*, *c.* 16. for Amendment of the Law

Audita Querela.

1. This in it ſelf is no *Superſedeas*, and therefore Execution may be taken forth, unleſs a *Superſedeas* be actually ſued 92

2. And if the *Audita Querela* be founded on a Deed, that muſt be proved in Court before a *Superſedeas* ſhall be granted *ibid.*

3. If an *Audita Querela* be founded on a Record, or the Party be in Cuſtody, the Proceſs upon it is a *Sci' Fa'* *ibid.*

4. But if grounded on a Matter of Fact, or the Party not in Cuſtody, the Proceſs is a *Venire* and Diſtreſs infinite *ibid.*

5. Where the Party is in Execution, he may either have a *Sci' Fa'* or *Venire*, *&c.* *ibid.*

6. Where two *Nichils* are return'd the Court will relieve on Motion without an *Audita Querela* 93

7. *A.* on Judgment againſt him renders himſelf, but never gives Notice to the Plaintiff nor gets the Bail diſcharged, and the Plaintiff on *Sci' Fa'* gets Judgment againſt the Bail, the Court would not relieve them on Motion, but put them to their *Audita Querela* 101

8. One taken in Execution on an *Audita Querela* may be bailed 105

See alſo page 264

Averments.

1. Where Promiſes are mutual, Performance or Tender, *&c.* muſt be averr'd 112, 172

2. So where one thing is to be done as the Conſideration of the other in Contracts, *&c.* 113, 171

3. Where and in what Caſes Conſiderations in Aſſumpſits muſt be averr'd, *vide* 23, 24, 25, 29

4. Where the Replication muſt conclude to the Country, and where with an Averment 2

5. Where Jointenancy is pleaded in Abatement the Life of the other Jointenant not named muſt be averr'd 32

6. On

6. On Administratihn granted to *A.* during the Absence of *B.* the Narr' must aver that *B.* is absent 42

7. Where an Award is pleaded to be made before the Day, *Ready to be delivered* need not be averr'd 69

8. A Parol Award may be pleaded with Averment of *Ready to be delivered*, &c. 75

9. Where Uses may be averr'd by Parol or not, *vide* 676

10. No Averment can be admitted of a Trust to superstitious Uses by the Statute of Frauds 162

11. Any Matter out of a Deed that alters the Case can't be averr'd 197

12. Nor is any Averment to be receiv'd against the expres's Words of a Deed or Will 227

13. Where a Matter is averr'd to be within the Jurisdiction the Defendant must plead to the Jurisdiction, or else is estopp'd 202

14. See of Averments in Indictments on 5 *Eliz.* that it was a Trade at the Time of the Act 611

15. Where Uses may be averr'd *vide* 676, 678

See also *Declarations*, *Estoppel*, and *Pleadings*.

Avowry, vide *Replevin*.

Authority.

1. It is essential to a Deputy to have the same Power with his Principal 95

2. And a Covenant or Condition to restrain such Power is void 96

3. And he may do all Acts that his Principal could, except making a Deputy *ibid.*

4. But tho' he can't make a Deputy as to his whole Power, yet he may impower him to do particular Acts *ibid.*

5. As a Deputy Steward of a Court Baron may impower another to hold a Court, take Surrenders, *&c.* 96, 97

6. And such Under Deputy may either act in his own Name, or else reciting his Authority, act in the Name of the Deputy or Principal 97

7. Except an Under Sheriff, who must act in the High Sheriff's Name, because the Writs are so directed, *&c.* *ibid.*

8. The Acts of a Steward *de facto* are sufficient among Tenants of a Manor *ibid.*

9. Authority given by Letter of Attorney may be either general or special *ibid.*

10. And tho' particular Authorities cannot be varied from in Matter of Substance *ibid.* and 658

11. Yet if only a Variance in Circumstance it may be good 97

12. Principal Officer answerable both for himself and Deputy 18, 19

13. Yet the Deputy is also chargeable as a wrong Doer *ibid.*

14. Where any Authority is given to Justices of Peace it must be exactly pursued 475

15. See other kinds of Authorities 363, 419, 442, 454, 467, *&c.*

See also *Power*.

Award, vide *Arbitrament*.

B.

Bail in Civil Cases.

1. SEE the Rules of Practice about putting in Bail and excepting thereto 98

2. In Debt on Bond, tho' the Defendant says it was usurious, or *per duress*, it shall not excuse from special Bail 100

3. Special Bail in *Indebit' assump'* so for Money won at Play *per Holt*, *contra* 2. *ibid.*

4. But

4. But not in Debt on Bond to perform Covenants: Yet with reſpect to the Breaches and the Damage thereby (the meaſure of which ſhall be taken from the Plaintiff's Oath) it may *ibid.*

5. In *B. R.* if the Sum recovered exceed the Sum in the *Ac etiam Billæ*, the Bail is not liable 102

6. On Removal by *Habeas Corpus* ſpecial Bail muſt be given in here, except in Caſes of Executors 98, 101, 102

7. But on ſuch Removal the Court will examine the Cauſe of Action and take Bail accordingly *ibid.*

8. And on Removal out of an inferior Court, the Plaintiff is bound to accept the Bail below, except in *London* 97

9. For the Sufficiency of Bail in *London* is at the Peril of the Clerk who is reſponſible, and the Plaintiff can't except there *ibid.*

10. Yet in Debt againſt Executor on a Judgment ſuggeſting a *Devaſtavit*, he ſhall give Bail; for there the Action is in the *Debet & Detinet* 98

11. And on Removal by *Habeas Corpus* where ſpecial Bail was below he ſhall give Bail to appear within two Terms, but not to pay the Condemnation *ibid.*

12. On Error in Parliament of a Judgment affirmed in *B. R.* new Bail is required 97

13. For the firſt Bail does not extend to Coſts aſſeſs'd in the Houſe of Lords, therefore a new Recognizance is to be *ibid.*

14. One charged in Cuſtody of the Sheriffs of *L.* was diſcharged on common Bail for want of proceeding in two Terms by 4, 5 *W.* 3. 98, 99

15. In an Action on a Replevin-Bond common Bail ſhall be admitted 99

16. The Merits of the Caſe not to be examined into upon Bailing (*vide ſupra*, 7.) 99, 100

17. If the Sheriff takes inſufficient Bail for Appearance and the Plaintiff refuſes it, he is liable to an Action and may be alſo amerced 99

18. The Sheriff may take Bail Bond on Attachment for Contempt, but the Proſecutor may refuſe to accept it 608

19. But if in either Caſe the Plaintiff take an Aſſignment of the Bail Bond (tho inſufficient) the Court will not amerce 99

20. *A.* recovers in three Actions wherein were three Bails, the Defendant render'd himſelf, and one of the Bails enter'd an *Exoneratur* on the Bail Piece; this does not diſcharge the reſt till *Exoneratur* enter'd for them alſo 98

21. So *A.* on Judgment againſt him renders himſelf, but gives the Plaintiff no Notice, nor Diſcharges the Bail Piece; and the Plaintiff on *Sci' Fa'* gets Judgment againſt the Bail, and the Court would not relieve, becauſe no *Exoneratur* enter'd 101

22. Tho' a Render before Return of the *Latitat* is not pleadable to an Action on a Recognizance of Bail *ibid.*

23. Yet the Court *ex Officio* allowed it on the *Latitat* as well as on a *Sci' Fa'* and denied the Caſe of *Miles* and *Bateman*, 3 *Keb.* *ibid.*

24. And note, Render in Diſcharge of Bail in an Action will not diſcharge the Bail on an Indictment 105

Bail in Criminal Caſes.

1. One Committed for Treaſon or Felony is to enter his Prayer on the *Habeas Corpus* Act, to be tried the firſt Week of the Term or Day of Seſſions after his Commitment 103

2. But if an Act ſuſpends the Power of Bailing for a time, there he need not enter his Prayer till the firſt Week in Term or Day of Seſſions after the Expira-

Expiration of ſuch Act *ibid.*

3. Yet Lord *Ailesbury* was bailed tho' no Prayer entred in time, becauſe long impriſoned, Tryal delayed, and Life in Danger 104

4. One committed for aiding an Eſcape of *D.* committed for Treaſon, was bailed for Default of Proſecution 103

5. One indicted of Murder ought not to be bailed upon Affidavits of the Evidence 104

6. But one found Guilty of Murder by the Coroner's Inqueſt only is bailable, *contra* if indicted *ibid.*

7. One indicted of Murder and found Guilty of Manſlaughter, not bailable before Clergy had 103

8. Yet *Liſle*, who was indicted of Murder and found guilty of Manſlaughter, was bailed before Clergy had *ibid.*

9. So in Appeal of Murder and found guilty of Manſlaughter, one was bailed before Clergy. *Q.* 61, 62

10. *M.* committed for forging Indorſements on Bank Bills bailed on a *Habeas Corpus*, becauſe only a great Miſdemeanor 104

11. But upon Error of a Conviction for a forcible Deteiner the Defendant was refuſed to be bailed 106

12. Becauſe in Execution for the Fine, *i. e.* 100 *l.* tho' the long Vacation coming on *ibid.*

13. Yet one taken on *Excom' Cap'* is bailable, while the *Ret'* of the *Habeas Corpus* is under Conſideration 105

14. See there the Manner of the Entry of ſuch Bail and Condition of the Recognizance *ibid.*

15. But Bailing during Conſideration (as 13.) is diſcretionary, and the Court will refuſe it if he pleads a falſe Plea 106

Bailiff.

1. A Corporation aggregate may appoint a Bailiff to diſtrein, without Deed 191

2. In Replevin, If the Defendant makes Conuzance or juſtifies as Bailiff to *J. S.* a Traverſe of the Command of *J. S.* is ſufficient 107

3. So in Treſpaſs for taking Cattle or Goods, for in thoſe Caſes, tho' *J. S.* may have Right to take the Cattle, *&c.* yet a Stranger can't juſtifie the Taking but by his Command, *&c.* *ibid.*

4. But *aliter* in Treſpaſs *quare Clauſum fregit*; for there, tho' the Defendant juſtifies as Bailiff, or by Command of *J. S.* the Plaintiff ſhall not traverſe the Command, becauſe it would admit the Truth of all the reſt of the Plea *ibid.*

5. In Treſpaſs on a Juſtification as Bailiff to a Court-Leet for levying an Amercement, ſome Eſtreat of the Court or Warrant of the Steward muſt be ſhewn *ibid.*

6. *Note* in Replevin the Bailiff is an Actor, and ſhall recover upon the Merits 108

7. But in Treſpaſs the Bailiff is only to excuſe the Wrong, and recovers nothing *ibid.*

Bakers, vide *Weights and Meaſures.*

Bankrupts.

1. An Innkeeper held not within any of the Statutes about Bankrupts, tho' alſo a Part-owner of a Ship 109

2. So a Buying and Selling under a particular Reſtraint is not within the Statute 110

3. But an *Engliſh* Subject trading from Foreign Parts may be a Bankrupt *ibid.*

4. If a Defendant renders himſelf in Diſcharge of Bail and lies two Months, he is a Bankrupt from the Arreſt 111

5. Yet adjudg'd tho' lying in Priſon upon Arreſt makes a Bankrupt, 'tis otherwiſe if he puts in Bail 109, 110

6. Outlawry, after an Act of Bankrupcy committed, ſhall not defeat the Intereſt the Creditors have acquired in his Eſtate 108

7. Yet a Purchaſor after, ſhall not be Impeached by a Commiſſion ſued five Years after the Bankrupcy 109

8. A plain Act of Bankrupcy can't be purged by dealing afterwards, *aliter* if doubtful only 110

9. An Aſſignee has Property by Relation from the time of the Bankrupcy, ſo as to avoid all Meſne Acts 111

10. See the Judges Reſolutions on the Stat' 4, 5 *Annæ*, againſt Frauds committed by Bankrupts 111, 112

11. A Mortgageor or Purchaſor precedent, tho' by a defective Conveyance, to be preferr'd before the Aſſignees of Bankrupcy 449

Bargain and Sale of Goods.

1. Earneſt only binds the Bargain, and gives the Buyer a Right to demand the Goods 113

2. But notwithſtanding Earneſt, the Money is to be paid on fetching away the Goods; and a Demand *ſans* Payment is void *ibid.*

3. And if the Buyer does not come to pay, the Seller ought to go and requeſt him, and then if he does not pay, *&c.* in convenient Time, the Agreement is diſſolved *ibid.*

4. Where one thing is to be the Conſideration of the other, tho' there be mutual Promiſes, Performance muſt be averr'd 112

5. As if I ſell you my Horſe upon your paying me 10 *l.* I can't have the Money without a Delivery or Tender of the Horſe, Nor you my Horſe without averring Payment or Tender and Refuſal of the Money 113

6. So where mutual Promiſes are to transfer Stock on Payment of ſo much Money 112

7. But *aliter* where a time is limited for the Performance on one Part 113, 171, 172

8. If *A.* and *B.* come to a Shop, and *A.* ſays to the Seller, Let *B.* have ſuch and ſuch Goods and I will ſee you paid, *&c.* the Law intends *A.* to be the Buyer, and *B.* to act but as *A*'s Servant 23, 28

Barons, vide *Peers.*

Baron and *Feme.*

1. Action againſt a Feme Covert allow'd good, her Husband being Alien Enemy and in *France:* For a Divorce ſhall be intended 116

2. The Husband held liable to the Wife's Contract as a ſeparate Trader, *&c.* becauſe they cohabited, *per Holt* 113

3. Wife can't charge her Husband after notorious Separation, tho' by Conſent, and ſeparate Allowance 116

4. Nor is he bound by her Contracts, or liable even for Neceſſaries, after a notorious Elopement, unleſs he take her again 116, 119

5. But if he turns her away he gives her Credit for Neceſſaries where-ever ſhe goes, *per Holt* 118

6. And while they cohabit he ſhall anſwer her Contracts, *&c.* for by cohabiting his Aſſent is preſumed, *per eundem* *ibid.*

7. *Contra* where the Husband expreſly

preſly diſaſſents beforehand, by Notice to the Owner or his Servant, *per eundem* *ibid.*

8. If ſhe takes up Materials, as Silks, *&c.* and pawns them before made into Clothes, he is not liable; for they never came to his Uſe. *Contra* if made up and worn, *per eundem* *ibid.*

9. Action lies not on a Promiſe of Marriage, except the Contract is mutual, for otherwiſe it was only *Nudum Pactum* 24

10. A Contract of Marriage *per verba de preſenti* is a Marriage *de facto* 437, 438

11. And whether *per verba de preſenti* or *de futuro* is cognizable in the Spiritual Court, and their Sentence is binding 437

12. Yet held that Marriage by a mere Layman was void, and a Cohabitation thereupon did not entitle the Man to Adminiſtration of the Woman's Goods 119

13. For on his demanding a Right due to Husbands by the Eccleſiaſtical Law, he muſt prove himſelf a Huſband by the ſame Law 120

14. *Quære* in Caſe of ſuch Husband's Death if it ſhall entitle the Feme and the Iſſue to a Diſtribution *ibid.*

15. Note the Form of pleading a Marriage is, That it was *per Presbyterum ſacris Ordinibus Conſtitut'* *ibid.*

16. Yet in Debt by Baron and Feme *Nunques accouple, &c.* is no Plea, for a Marriage *de facto* is ſufficient 437

17. Nor can the Spiritual Court annul a Marriage after the Parties are dead, becauſe they proceed *pro ſalute Animæ* 121

18. Yet Evidence at Common Law was admitted to Baſtardize a Peer, even after the Death of himſelf and Parents (*durum*) 120, 121

19. The Husband may releaſe Coſts adjudg'd to the Wife in the Spiritual Court, unleſs a Separation be, and Alimony allow'd 115

20. He alone muſt bring the Action for Work done by her during Coverture, unleſs an expreſs Promiſe be made to her 114

21. And the Advantage of ſuch Work ſhall not ſurvive to her, but go to the Husband's Executors *ibid.*

22. But Money earn'd by her living ſeparate ſhall go towards her own Maintenance 118

23. Trover by Baron and Feme, *ad dampnum* of both, held naught after Verdict; for the Poſſeſſion and Property of the Wife is veſted in the Huſband 114

24. But Treſpaſs by him for Impriſonment of the Wife, *per quod Negotia viri infecta reman' ad damp'* of both, held well after Verdict 119

25. For Matter may be alledg'd in Aggravation of Damages, for which no Action will lie *ibid.*

26. Husband of a Feme Executrix gives a new Day to the Teſtator's Debtor, who then makes a new Promiſe, *&c.* he may bring Aſſumpſit thereon without joining the Wife 117

27. But if he dies before Recovery ſhe is reſtored to her former Right, for the Duty was not extinguiſh'd by the new Promiſe *ibid.*

28. A *Sci' Fa'* by Baron and Feme on a Judgment recovered by her whiles Sole, if after Execution awarded ſhe dies, it ſurvives to the Huſband 116

29. In an Action againſt Baron and Feme he ſhall give Bail for Appearance both for him and his Wife 115

30. But where one brings an Action againſt the Husband only, he can't declare againſt him and his Wife *ibid.*

31. In an Action againſt both for a Battery by the Wife while he was in Priſon, a Declaration can't be deliver'd at the Priſon againſt him & *Ux'* but Proceſs muſt be ſued againſt the Wife, and ſhe arreſted 114

32. The

32. The Wife may juſtify an Aſſault in Defence of her Husband 407 437

33. Husband and Wife covenant to levy a Fine of the Wife's Land to the Uſe of the Heirs of the Body of the Husband on the Wife begotten is void 675

34. *A.* marries *B.* living a former Wife, and receives her Rents, *&c. B* may have *Indeb' aſſump'* as for Money received to her Uſe, the Husband having no Right to receive it, *&c.* 28

35. A Covenant before Marriage to releaſe the Wife's Guardian after, ſet aſide in Equity 158

36. If *Baron* and *Feme* declare on *Indeb' aſſump'* to them as Executors on a Nonſuit they ſhall pay Coſts 207

37. A Warrant, *&c.* by a *Feme Sole* is revoked by her Marriage after 399

Barratry, vide *Uſury*.

Barriſters at Law.

1. If a Defendant be a Barriſter or Attorney, *&c.* attending the Court, he may have the Venue changed to *Middleſex* from any other County 668

2. Alſo a Tryal at Bar is ſeldom denyed to any Gentleman at the Bar or Officer of the Court 651

Baſtard.

1. The Rule that none ſhall be Baſtardized after his Death holds only in Caſe of *Baſtardeigne* and *Mulier puiſne* (vide *Baron & Feme* 17, 18) 120, 121

2. But the Spiritual Court can't annul a Marriage, or baſtardize Iſſue after the Parties Death 548

3. A Child begotten after a Divorce *a Menſa & Thoro* only, ſhall be taken to be a Baſtard 123

4. *Aliter* after a voluntary Separation, unleſs found that the Husband had no acceſs 123

5. So if the Husband be beyond Sea during the whole time of her going with Child, 'tis a Baſtard 122, 434

6. *Contra* if he were here at all during that Time, for then Acceſs would be preſumed 122

7. A Baſtard Child is generally to be ſettled where it is born 485

8. But if born in *B.* pending an illegal Order for removing the Mother thither, 'tis no Settlement there 121, 474, 532

9. Nor does the Juſtices Order for Maintenance determine the Baſtard's Settlement 123

10. Money may be ordered to be paid to the Overſeers for Maintenance of a Baſtard Child 122

11. Juſtices may order Payment of a Sum in groſs for that purpoſe 124

12. Order to pay ſo much *per* Week till it be fourteen Years old is ill 121, 478

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Challenge.

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16. And

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See alſo *Evidence*.

Withernam, vide *Replevin*.

Words ſueable in the Spiritual Court, &c. or not.

1. Words ſueable in the Spiritual Court, *viz. Whoremaſter, Whore, Wittal, Brandy-nos'd-Whore*, 692, 693

2. Words not ſueable there, *viz. Impudent, Brazen-fac'd, Belzebub* or *Devil*, or *Prince of Darkneſs*, becauſe no Diſcredit 692

3. Alſo Suit lies not in that Court for words charging an Offence, not Puniſhable there 691

4. As ſaying of a Parſon, *He has no Senſe, is a Dunce and a Blockhead, and deſerves to have his Gown pulled over his Ears ibid.*

5. Nor where words of Spiritual Conuzance are coupled with others of a Temporal Crime 552

6. As Thou art a *Whore and a Thief*, or *keep'ſt a Bawdy-houſe*; tho' *Whore* alone is ſueable there *ibid.* vide 404

7. Words importing any Charge of Incontinency, are ſueable there 693. 696

8. Court of Honour can't hold Plea of ſcandalous Words 553

Words actionable at Law, or not.

1. In Offices of Profit, words imputing want of Ability are Actionable 695

2. But not in Offices of Honour, as calling a Juſtice of the Peace, *Aſs*, or *Beetle-headed-Juſtice ibid.*

3. *There goes your rare Chancellor to ſuborn Witneſſes to ſwear againſt the Perſon*, actionable *per Holt. ſed Cur. Divid.* 696

The TABLE.

4. Words subjecting a Man to Punishment, may not be actionable, unless Scandalous *ibid.*

5. As *Thou art one that stole my Lord S's Deer*, are not; nor *Papist*, but with respect to the Times *ibid.*

6. A Charge of *Fornication*, &c. is not actionable, unless special Damage 693

7. Nor, *She is a Whore, and had a a Bastard by her Father's Apprentice* 696

8. Nor, *She had a Bastard*; because it don't appear to be chargeable to the Parish 694

9. Nor, *You are a Cheat*, spoke of a Tradesman, without laying a *Colloquium* of his Trade

10. Nor, of a Butcher, *That the Cow died of Calving*, tho' laid *per quod* he lost his Customers 693

11. But to say, *You stole my Box-Wood, and I will prove it*, is actionable 695, 696

12. So to say of a Justice and Deputy Lieutenant, *Don't vote for him, for he is a Jacobite, and for bringing in the Pretender*, &c. 694, 695

13. To say, in *Black-Bull Yard you could procure broad Money for Gold, and clip it*, because it imports an Act done 697

Words indictable, or not.

1. Words of Slander spoken of a Mayor not indictable 697

2. As *(You are a Rogue and a Rascal*, &c.*) aliter* if written *ibid.*

3. So spoken of a Justice of the Peace, *He is a Fool, an Ass, a Coxcomb*, &c. not indictable 698

4. But are good Cause to bind to the good Behavior *ibid.*

See also *Libells* and *Variance*.

Writs.

1. In all continued Writs, the *alias* must be tested the Day the former Writ was returnable 699

2. A Writ bearing *Teste* out of Term is void, but the Sheriff is justifiable 700

3. A Writ of Execution returnable two Terms from the *Teste* is well, but *Mesne* Process is void *ibid.*

4. Defendant can't take Advantage of an ill Original by the Recital but upon Oyer, or a *Certiorari* 701

5. A Writ of *Mandamus* ought to be directed to the Persons who are to do the Act, *vide Mandamus* 699. 701

6. See a *Ne exeat Regnum* to stay a Man's going to *Scotland* since the Union 702

See also *Certiorari, Habeas Corpus, Homine Replegiando, Returns of Writs*, and *Scire Facias*.

The End of the Table.

ER-

ERRATA'S.

PAge 2. Line 17. add *Rot.* 197. p. 3. l. 20. r. *Hill.* 2 *Ann. int. Trin.* 2 *Ann. rot.* 146, p. 4. l. 17. add *Rot.* 344, l. 19. add *and B.* p. 5, l. 6. add *int. Mich.* 1. *Ann. rot.* 467, l. 22. add *rot.* 398, p. 8. l. 4. add *int. Mich.* 5 *Ann. rot.* 439, l. 6. r. *Honoria*, p. 10. l. 12. r. *Janſon*, and add *int. paſ.* 7 *W.* 3. *rot.* 242, l. 20. add *int. Trin.* 10 *W.* 3. *rot.* 763, p. 12. l. 2. add *& al.* and *int. paſ.* 2 *W. & M. rot.* 43, l. 24. add *againſt*, p. 13. l. 15. add *int. Trin.* 9 *W.* 3. *rot.* 359, l. 17. r. *Bruera & jampua*, p. 16. l. 12. raſe out *Ventr.* 114. 126, l. 40. for 59. r. 63, p. 17. l. 14. r. *rot.* 403, p. 23. l. 4. for *Drawer*, r. *Acceptor*, p. 26. l. 1. add *int. Hill.* 1 *Ann. rot.* 435, p. 27. l. r. *Birkmyr*, and add *int. paſ.* 3 *Ann. rot.* 64, l. r. *Haſtings*, and 10 *W.* 3, p. 33. l. 6. r. *Sudgrave*; p. 34. l. 17. r. *Ballam*, and add *Suggeſt. int. eod. Term. rot.* 229; p. 59. l. 23. r. *Lepara*; p. 56. l. 14. r. 675. p. 66. laſt line but r. *Lev.* 177. p. 92. l. 15. r. 142. p. 94. l. 28. add *Mich.* p. 104. l. 15. r. *Exchequer*; l. 26. r. *Diſcourage*; p. 107. l. 27. r. 1 *Leon.* 50. 2 *Leon.* 169. 216; p. 144. r. 152. laſt line r. 1 *Mod.* p. 192. l. 29. r. *Cuddon*; p. 216. l. 16. r. 27. p. 255. l. 32. r. 461. p. 230. l. 4. r. 64. p. 240. laſt line, 34, r. 134. p. 278. l. 9. after *hath*, add *not*; p. 295. l. 19. 237. r. 225, and 275. r. 273. p. 303. l. 22. 271. r. 275. p. 388. l. laſt, 46. r. 79.

Errata's in the Table.

In Action on the Caſe, *Sect.* 19. for 13. read 37.
Additions, *Sect.* 10. for *Archbiſhop, bis*, read *A. B.*
Adminiſtrations, *Sect.* 38. before 298, add 297.
Age, *Sect.* 1. for 17, read 21, and 21 for 17.
Alehouſes, *Sect.* 4. for *Recognization*, read *Recognizance.*
Apprentices, *Sect.* 13. for *Matter*, read *Maſter.*
Arbitrament, *Sect.* 6. for *Ceaſe*, read *be diſmiſſed.*

ERRATA.

BRITISH MUSEUM
1755

Errata's in the Table.

Action on the Case, Sect. 19. for 12. read 37.
Addition, Sect. 10. for Archbishop, bis, read A. B.
Administrations, Sect. 38. before 298, add 297.
Age, Sect. 1. for 17, read 21, and 21 for 17.
Alienable, Sect. 4. for Recognizance, read Recognizances.
Apprentice, Sect. 13. for Master, read Mafter.
Arbitrament, Sect. 6. for Case, read be difmiffed.